INFORMATION LETTER

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NEW OVER-ALL BASIC PRICING ORDER—FOOD PRODUCTS REGULATION NO. 1—MADE EFFECTIVE JUNE 21 BY OPA

Issued Along With Supplements Which Establish 1944 Ceilings for Canned Citrus, Beans

The new over-all basic price regulation, first reported in the May 20 INFORMATION LETTER, was issued June 17 by the Office of Price Administration, and is carried as an insert in this issue.

Known as Food Products Regulation No. 1, the new price control will be effective June 21. Five supplements covering macaroni and noodle products; processed beans and processed macaroni and noodle products; prepared flour mixes; pitted and macerated domestic dates and domestic date products; and packed citrus products, in sales prior to wholesale, were issued simultaneously with FPR No. 1.

As soon as additional supplements can be prepared to replace present price regulations, the rest of the 1944 pack of canned fruits and vegetables and frozen fruits and vegetables will be controlled by Food Products Regulation No. 1.

As previously explained, the new plan differs from existing price regulations in that it collects into one document the common problems, such as definitions, general pricing provisions and a number of miscellaneous provisions, which occur frequently in pricing. These common problems are standardized so that they may be handled in the same manner regardless of which commodities they affect.

At the same time, supplements to the over-all regulation contain actual prices for each commodity and provide for separate pricing problems peculiar to that commodity. The supplements operate independently from the over-all regulation and may be amended without affecting FPR No. 1.

Provisions of the basic regulation apply to each supplement only to the extent that the supplement specifically adopts the applicable provisions.

OPA said that the new FPR No. 1 will:

1. Cut down on the number of documents that sellers will have to handle in pricing their commodities.

2. Speed up action in getting changes in regulations out to the industry.

3. Together with its supplements, greatly reduce the total number of provisions under which the industries covered by the plan are now operating. Moreover, an individual seller can tailor the regulation to his needs by combining with the basic regulation only those particular commodity supplements in which he is interested.

4. Provide automatic standardization of all basic provisions included. This will help to unify and coordinate OPA pricing techniques, keep each supplement automatically abreast of improvements in the basic regulation and facilitate general compliance with the basic provisions.

Part 1 of the new regulation includes 14 definitions for types of sellers, kinds of sales and other terms which are commonly used in pricing.

Part 2 deals with 16 pricing provisions which recur frequently in the regulations. Included are provisions covering payment of brokers, units of sale and fractions of a cent, minimum prices for products in new container types or sizes, and treatment of Federal and State taxes.

Part 3 spells out 16 miscellaneous provisions, including handling of weights, storage, export sales, records which must be kept, and adjustable pricing.

Officials of the Office of Price Administration stated that the issuance of supplements replacing existing price regulations is not to be considered as affecting the status of any pending protest, petition for amendment or other proposed action.

Text of Supplement 2 (Processed beans, macaroni and noodles) is presented on page 8265 and of Supplement 5 (citrus products) on page 8262.

Dornbos Joins OPA Fish Section

Lawrence Dornbos has joined the staff of the Fish Pricing Section of the Office of Price Administration, according to an announcement made by that agency June 13. For the past 20 years Mr. Dornbos has been a partner in the firm of H. J. Dornbos and Bro., of Grand Haven, Michigan, fish producers and processors.

RAW CHERRY PRICES

OPA Will Use 7¾¢ per lb. in Calculating Ceilings for Canned Product

A price of 7¾ cents per pound for raw cherries has been designated by the Office of Price Administration for the 1944 pack. This means simply that that price will be used by OPA in calculating the ceiling price for canned cherries this year, regardless of the price a canner pays for the fruit. The price for this year is not a ceiling price. In other words, no restrictions are placed on canners with regard to the price they pay for the raw product except that no more than 7¾ cents per pound will be reflected in their canned cherry ceiling.

It will be recalled that the price of 8½ cents per pound last year was a ceiling price above which canners could not legally buy cherries for processing.

The OPA ceiling price on canned cherries for 1943 was presumed to reflect the last year's ceiling price of 8½ cents for raw cherries. OPA has announced that only 7¾ cents will be reflected in the 1944 price, which is ¾ cent less per pound. This is equivalent to stating that approximately 60 cents per dozen less will be reflected in the 1944 price for No. 10's, because of the reduced price to the grower.

Text of the joint announcement on raw cherry prices made by OPA and the War Food Administration follows:

"To encourage canners to meet the heavy requirements of the armed forces for canned red sour pitted cherries, the War Food Administration and the Office of Price Administration announced to growers and processors June 13 that the designated price for R.S.P. cherries will be $155 per ton for canning and cold packing.

"At the same time, OPA also assured processors who pay growers the designated price of $155 per ton that this price will be used in computing processors' costs and consequently the ceiling prices on both canned and cold packed cherries will be on their normal relationship with one another, hence, neither type of pack will have an advantage over the other.

"The announcement is intended to enable canners to complete plans for meeting at least the minimum government and civilian requirements of 2½ million cases (basis 24/2's) of canned cherries. Because of the short cherry crop and pack last year, the Government was able to procure only 37 per cent of its canned cherry requirements.

"With a record cherry crop in prospect this season and in view of the proposed ceilings for the 1944 pack, WFA and OPA said canners should have no hesitancy in meeting both government and civilian requirements for canned cherries this year.

"The maximum price regulation naming ceiling prices for canned and cold pack cherries are now being prepared and will be issued shortly."

Supplement No. 5 to Food Products Regulation No. 1—Packed Citrus Products of 1944 and Later Packs

ARTICLE I—EXPLANATION OF THE SUPPLEMENT

Section 1. Explanation of the supplement. (a) This supplement establishes maximum prices for the following citrus products processed and packed on and after October 1, 1943: Packed grapefruit juice, packed grapefruit segments, packed orange juice and packed orange-grapefruit juice blended (50 per cent orange—50 per cent grapefruit).

(b) This supplement applies to sales of the named packed citrus products by all persons except wholesalers and retailers.

(c) This supplement applies in the 48 States of the United States and the District of Columbia.

(d) This supplement supersedes Maximum Price Regulation Nos. 306 and 509 as to the commodities and sellers covered. All orders issued under Maximum Price Regulation No. 509 shall remain in effect as orders under this supplement.

(e) This supplement becomes effective on June 21, 1944.

Sec. 2. Applicability of Food Products Regulation No. 1. Important: Not all of the provisions affecting the maximum prices of packed citrus products are stated in this supplement. Those which are not specifically set forth here are stated in Food Products Regulation No. 1, and they are just as much a part of this supplement as if they were printed here. The "Explanation of the regulation" is also part of this supplement.

The particular sections of Food Products Regulation No. 1 which are applicable to this supplement are listed at appropriate places in the following provisions (in each case, the section number set forth in parentheses is the appropriate section number of Food Products Regulation No. 1). When any applicable section of the regulation is amended, the amendment also is applicable to this supplement.

Sec. 3. Definitions. (a) When used in this supplement, the term:

"Packed citrus products of the 1944 and later packs" means the commodities specified in Article II, processed and packed on and after October 1, 1943, in any container, whether or not hermetically sealed. However, it does not include frozen or dehydrated citrus products.

(b) The definitions of the following terms, set forth in the designated sections of Food Products Regulation No. 1, are applicable to this supplement:

"Person" (section 1.1 of FPR 1).
"Processor" (section 1.2 of FPR 1).
"Distributor" (section 1.3 of FPR 1).
"Primary distributor" (section 1.5 of FPR 1).
"Wholesaler" and "retailer" (section 1.6 of FPR 1).
"Ultimate consumer" (section 1.7 of FPR 1).
"Item" (section 1.8 of FPR 1).
"Container type" (section 1.9 of FPR 1).
"Sale" (section 1.10 of FPR 1).
"Price" (section 1.11 of FPR 1).
"Net delivered cost" (section 1.12 of FPR 1).
"Records" (section 1.14 of FPR 1).

ARTICLE II—PRICING PROVISIONS

Sec. 4. Packed grapefruit juice—(a) *General pricing provisions.* The processor's maximum prices per dozen containers, f. o. b. factory, for packed grapefruit juice shall be as follows:

The area named in Column 2 refers to each case to the area in which the fruit used in the pack was grown. (The location of the processor or his factory is not controlling.) Where the processor's pack of grapefruit juice at any one factory is produced from fruit grown in more than one area and different prices are named for those areas, the processor shall apply to the Office of Price Administration, Washington, D. C., for authorization of a maximum price, in accordance with the provisions of section 10(c).

(b) Pricing provisions for certain container types and sizes. (1) The maximum prices for grapefruit juice packed in glass containers, for sales to purchasers other than government procurement agencies, shall be as follows:

(i) For 8-ounce glass jars, Grade A or Fancy, 42½¢, for Grade C or Standard, 40¢ and for Offgrade or Sub-Standard, 37½¢, less than the maximum price for the same grade and style of pack in No. 2 cans, in the same area.

(ii) For 16-ounce glass jars 7½¢ more than the maximum price for the same grade and style of pack in No. 2 cans, in the same area.

(iii) For the 46-ounce glass jars, 17½¢ more than the maximum price for the same grade and style of pack in No. 3 cylinder cans, in the same area.

(2) If the processor cannot determine his maximum price for an item of packed grapefruit juice in a particular container size or type in accordance with the provisions of paragraphs (a), (b)(1), and (c) of this section, he shall determine his maximum price for the item in accordance with the provisions of section 10(a); and if he cannot determine a maximum price for the item under section 10(a), he shall apply to the Office of Price Administration, Washington, D. C., for authorization of a maximum price in accordance with the provisions of section 10(c).

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5		Col. 6		Col. 7	
				Container No. 2 can		Container No. 3 cyl. can		Container No. 10 can	
Item	State or area	Style of pack	Grade	Gov't. sales	Other sales	Gov't. sales	Other sales	Gov't. sales	Other sales
1	Florida and Texas.	Natural (unsweetened).	A or fancy	$1.360	$1.125	$3.17	$2.55	$6.37	$5.00
			C or standard	1.310	1.075	3.07	2.45	6.17	4.80
			Offgrade or substandard.	1.260	1.025	2.97	2.35	5.97	4.60
		Sweetened	A or fancy	1.385	1.150	3.22	2.60	6.32	5.15
			C or standard	1.335	1.100	3.12	2.50	6.32	4.95
			Offgrade or substandard.	1.285	1.050	3.02	2.40	6.12	4.75
2	California and Arizona.	Natural (unsweetened).	A or fancy	1.460	1.225	3.42	2.80	6.96	5.60
			C or standard	1.410	1.175	3.32	2.70	6.76	5.40
			Offgrade or substandard.	1.360	1.125	3.22	2.60	6.56	5.20
		Sweetened	A or fancy	1.485	1.250	3.47	2.85	7.11	5.75
			C or standard	1.435	1.200	3.37	2.75	6.91	5.55
			Offgrade or substandard.	1.385	1.150	3.27	2.65	6.71	5.35

NOTE: The prices in this table for government sales must be adjusted in accordance with the provisions of paragraph (c), below.

(c) Special pricing provisions relating to government sales. (1) Processors' maximum prices for sales to government procurement agencies shall be the maximum prices named in paragraph (a) for such sales, less the amount of the applicable monthly area grapefruit juice cost reduction for the month in which such grapefruit juice was packed. However, the monthly area grapefruit juice cost reduction for the months of October and November, 1943, (not segregated according to separate month) shall be applicable to sales of grapefruit juice packed during the period from October 1, 1943, through November 30, 1943. The monthly area grapefruit juice cost reduction for the month of May, 1944, shall be applicable to sales of grapefruit juice packed during the period from May 1, 1944, through September 30, 1944.

(2) The monthly area grapefruit juice cost reduction shall be established by order of the Office of Price Administration as soon as may be practicable after the period to which it applies. That amount is the difference between the cost for raw grapefruit reflected in the maximum prices for government sales set forth in paragraph (a), above, and the monthly area grapefruit cost determined by the Office of Price Administration, converted for the actual reduction in cost per dozen containers of the particular size and type packed during the month to which such monthly area grapefruit juice cost reduction is applicable.

(3) In the event that any monthly area grapefruit cost, determined by the Office of Price Administration as set forth above, shall be equal to or greater than the cost for raw grapefruit reflected in the maximum prices for government sales set forth in paragraph (a), above, the Office of Price Administration shall provide by order that no reduction shall be applicable to the maximum prices for grapefruit juice packed during the month to which such monthly area grapefruit cost is applicable.

NOTE: The provisions of this paragraph (c) shall not be construed as affecting the power of the Office of Price Administration to change the maximum prices established by this supplement at any time.

(d) *Records required.* In addition to other records required to be maintained under other provisions of this supplement, each processor shall, for as long as the Emergency Price Control Act of 1942, as amended, shall remain in effect, keep complete records of all grapefruit purchases in value and quantity during the period from October 1, 1943, through September 30, 1944; and such records shall be available for inspection by the Office of Price Administration or its authorized agents or representatives at any reasonable time.

Sec. 5. Packed grapefruit segments—(a) General pricing provisions. The processor's maximum prices per dozen containers, f. o. b. factory, for packed grapefruit segments shall be as follows:

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
Item No.	State or area	Style of pack	Grade	Container No. 2 can
				Gov't. sales
1	Florida and Texas	Sweetened	A or fancy	$1.61
			B or choice	1.56
			C standard or broken	1.51

The area named in column 2 refers in each case to the area in which the fruit used in the pack was grown. (The location of the processor or his factory is not controlling.) Where the processor's pack of grapefruit segments at one factory is produced from fruit grown in more than one area and different prices are named for those areas, the processor shall apply to the Office of Price Administration, Washington, D. C., for authorization of a maximum price, in accordance with the provisions of section 10 (c).

(b) Pricing provisions for certain container types and sizes. If the processor cannot determine his maximum price for an item of packed grapefruit segments in a particular container size or type in accordance with the provisions of paragraph (a), he shall determine his maximum price for the item in accordance with the provisions of section 10 (a); and if he cannot determine a maximum price for the item under section 10 (a), he shall apply to the Office of Price Administration, Washington, D. C., for authorization of a maximum price in accordance with the provisions of section 10 (c).

(c) *Records required.* Each processor of grapefruit segments shall keep records of grapefruit purchases as provided in section 4 (d).

Sec. 6. Packed orange juice—(a) *General pricing provisions.* The processor's maximum prices per dozen containers, f. o. b. factory, for packed orange juice shall be as follows:

The area named in column 2 refers in each case to the area in which the fruit used in the pack was grown. (The location of the processor or his factory is not controlling.) Where the processor's pack of orange juice at any one factory is produced from fruit grown in more than one area and different prices are named for those areas, the processor shall apply to the Office of Price Administration, Washington, D. C., for authorization of a maximum price, in accordance with the provisions of section 10(c).

(b) Pricing provisions for certain container types and sizes. If the processor cannot determine his maximum price for an item of packed orange juice in a particular container size or type in accordance with the provisions of paragraph (a), he shall determine his maximum price for the item in accordance with the provisions of section 10(a); and if he cannot determine a maximum price for the item under section 10(a), he shall apply to the Office of Price Administration, Washington, D. C., for authorization of a maximum price in accordance with the provisions of section 10(c).

(c) Records required. In addition to other records required to be maintained under other provisions of this supplement, each processor shall, for as long as the Emergency Price Control Act of 1942, as amended, shall remain in effect, keep complete records of all orange purchases in value and quantity during the period from October 1, 1943, through

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5		Col. 6		Col. 7	
Item	State or area	Style of pack	Grade	Container No. 2 can		Container No. 3 cyl. can		Container No. 10 can	
				Gov't. sales	Other sales	Gov't. sales	Other sales	Gov't. sales	Other sales
1	Florida and Texas.	Natural (unsweetened).	A or fancy	$1.650	$1.700	$4.00	$4.10	$8.16	$8.31
			C or standard	1.600	1.650	3.90	4.00	7.96	8.11
			Offgrade or substandard.	1.550	1.600	3.80	3.90	7.76	7.91
		Sweetened	A or fancy	1.675	1.725	4.05	4.15	8.31	8.46
			C or standard	1.625	1.675	3.95	4.05	8.11	8.26
			Offgrade or substandard.	1.575	1.625	3.85	3.95	7.91	8.06
2	California and Arizona.	Natural (unsweetened).	A or fancy	1.950	2.000	4.75	4.85	9.00	9.75
			C or standard	1.900	1.950	4.65	4.75	9.40	9.55
			Offgrade or substandard.	1.850	1.900	4.55	4.65	9.20	9.35
		Sweetened	A or fancy	1.975	2.025	4.80	4.90	9.75	9.90
			C or standard	1.925	1.975	4.70	4.80	9.55	9.70
			Offgrade or substandard.	1.875	1.925	4.60	4.70	9.35	9.50

September 30, 1944; and such records shall be available for inspection by the Office of Price Administration or its authorized agents or representatives at any reasonable time.

SEC. 7. *Packed orange-grapefruit juice blended (50% orange-50% grapefruit).—(a) General pricing provisions.* The processor's maximum prices per dozen containers, f. o. b. factory, for packed orange-grapefruit juice blended shall be as follows:

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5		Col. 6		Col. 7	
				Container No. 2 can		Container No. 3 cyl. can		Container No. 10 can	
Item	State or area	Style of pack	Grade	Gov't. sales	Other sales	Gov't. sales	Other sales	Gov't. sales	Other sales
1.....	Florida and Texas.	Natural (unsweetened).	A or fancy.....	$1.505	$1.555	$3.585	$3.685	$7.265	$7.415
			C or standard...	1.455	1.505	3.485	3.585	7.065	7.215
			Offgrade or substandard.	1.405	1.455	3.385	3.485	6.965	7.015
		Sweetened....	A or fancy.....	1.530	1.580	3.635	3.735	7.415	7.565
			C or standard...	1.480	1.530	3.535	3.635	7.215	7.365
			Offgrade or substandard.	1.430	1.480	3.435	3.535	7.015	7.165
2.....	California and Arizona.	Natural (unsweetened).	A or fancy.....	1.705	1.755	4.085	4.185	8.280	8.430
			C or standard...	1.655	1.705	3.985	4.085	8.080	8.230
			Offgrade or substandard.	1.605	1.655	3.885	3.985	7.880	8.030
		Sweetened....	A or fancy.....	1.730	1.780	4.135	4.235	8.430	8.580
			C or standard...	1.680	1.730	4.035	4.135	8.230	8.380
			Offgrade or substandard.	1.630	1.680	3.935	4.035	8.030	8.180

The area named in column 2 refers in each case to the area in which the fruit used in the pack was grown. (The location of the processor or his factory is not controlling.) Where the processor's pack of orange-grapefruit juice blended at any one factory is produced from fruit grown in more than one area and different prices are named for those areas, the processor shall apply to the Office of Price Administration, Washington, D. C., for authorization of a maximum price, in accordance with the provisions of section 10 (c).

(b) *Pricing provisions for certain container types and sizes.* If the processor cannot determine his maximum price for an item of packed orange-grapefruit juice blended in a particular container size or type in accordance with the provisions of paragraph (a), he shall determine his maximum price for the item in accordance with the provisions of section 10 (a); and if he cannot determine a maximum price for the item under section 10 (a), he shall apply to the Office of Price Administration, Washington, D. C., for authorization of a maximum price in accordance with the provisions of section 10 (c).

(c) *Records required.* Each processor of orange-grapefruit juice blended shall maintain the records of grapefruit and orange purchases as provided in sections 4 (d) and 6 (c).

SEC. 8. *Sales between processors for purpose of fulfilling government set-aside requirements of War Food Order 22.* The processor's maximum price per dozen containers, f. o. b. factory, for any item of packed citrus products of the 1944 and later packs, in sales to another processor of those products, which are to be used by the purchaser in making sales to government procurement agencies under the set-aside requirements of War Food Order 22, shall be the maximum price set forth in sections 4, 5, 6, and 7 for sales of the item to government procurement agencies.

SEC. 9. *Label and labor allowances.* (a) Label and labor allowances shall be made by processors in the following circumstances and in the following amounts:

(1) When the processor sells any item covered by this regulation, unlabeled or labeled with labels supplied by the purchaser, in containers no greater in content than a No. 10 can, the maximum price established under this supplement shall be reduced by $1.50 per thousand labels used (label allowance).

(2) When any item covered by this supplement is sold unlabeled in containers no greater in content than a No. 10 can, the maximum price established under this supplement shall be reduced by one cent per case (labor allowance), in addition to the allowance provided in subparagraph (1), above.

(b) In each sale to a purchaser other than a government procurement agency, where a processor makes an allowance for labels or labor under this section he shall state the amount and nature of such allowance on the invoice accompanying the sale.

SEC. 10. *Provisions of Article II of Food Products Regulation No. 1 applicable to this supplement.* The following provisions of Food Products Regulation No. 1 are applicable to this supplement:

(a) Maximum prices for products in new container types or sizes (section 2.2 of FPR 1).

(b) Adjustment of dollars-and-cents maximum prices for processors who perform the wholesale or retail function (section 2.3 of FPR 1).

(c) Individual authorization of maximum prices (section 2.5 of FPR 1).

(d) Uniform delivered prices where the seller has customarily been selling on an f. o. b. shipping point basis (section 2.8 of FPR 1).

(e) Maximum prices for sales by primary distributors (section 2.9 of FPR 1). The maximum markup is 8 per cent.

(f) Maximum prices for sales by distributors who are not primary distributors, wholesalers, or retailers (section 2.10 of FPR 1).

(g) Payment of brokers (section 2.11 of FPR 1).

(h) Special packing expenses which may be reflected in maximum prices for sales to government procurement agencies (section 2.13 of FPR 1).

(i) Treatment of Federal and State taxes (section 2.14 of FPR 1). The "base period" applicable to primary distributors is March 1942.

(j) Units of sale and fraction of a cent (section 2.15 of FPR 1).

(k) Maintenance of customary discounts and allowances (section 2.16 of FPR 1).

ARTICLE III—MISCELLANEOUS PROVISIONS

SEC. 11. *Grades and invoices.* (a) The provisions of this section apply to all sellers, whether or not processors, who affix labels or cause them to be affixed to the packed citrus products, covered by this supplement. However, the provisions of this section do not apply to products sold to government procurement agencies.

(b) The term "grade" when used in this supplement, means the grade, at the time of shipment by the seller, as defined and established by the United States Department of Agriculture.

(c) On and after February 4, 1944, each seller selling any item covered by this supplement shall furnish the purchaser, at or before the time of delivery, with an invoice describing the item and separately stating its grade.

(d) The grade of the item shall be shown on the invoice by use of the United States Department of Agriculture grade designation, by letter or descriptive term. For example, the grade of an item which conforms to the specifications for U. S. "Grade A" shall be designated either "Grade A" or "Fancy."

(e) In any case in which standards or definitions are established by the United States Department of Agriculture, or under authority of the Federal Food, Drug, and Cosmetic Act, for syrup or packing medium for any packed citrus product covered by this supplement, the statement of grade on the invoice shall show the syrup or packing medium and shall be described by the same description as that used in the applicable standard or definition.

(f) A processor shall not be subject to any criminal penalty, civil enforcement action or suit for treble damages under the Emergency Price Control Act of 1942, as amended, for failure of an item covered by this supplement to conform to the grade designated on the invoice issued with respect to it if (1) within 90 days prior to shipment of the item by the processor to the purchaser, the Office of Distribution of the War Food Administration (or any successor) has issued to the processor a certificate of quality and condition for processed fruits and vegetables (or any similar certificate) covering a lot which includes the item and from which samples have been drawn by official graders of the Office of Distribution of the War Food Administration (or any successor) and (2) the grade designated on the invoice conforms to the grade designated on the certificate.

(g) A person who purchases an item covered by this supplement from a processor and who relies in good faith upon the grade designated on the invoice furnished to him by the processor shall not be subject to any criminal penalty or civil enforcement action under the Emergency Price Control Act of 1942, as amended, in connection with the purchase, for failure of the item to conform to the grade designated on the invoice. He may resell the item at the grade designated on the invoice and shall not be subject to any criminal penalty, civil enforcement action, or suit for treble damages under the Emergency Price Control Act of 1942, as amended, in connection with such resale.

(h) Nothing in this supplement shall be construed to change any of the requirements of the Federal Food, Drug, and Cosmetic Act, or any regulation issued under it.

SEC. 12. *Provisions of Article III of Food Products Regulation No. 1 applicable to this supplement.* The following provisions of Food Products Regulation No. 1 are applicable to this supplement:

(a) Restrictions on sales to primary distributors (section 3.1 of FPR 1).

(b) Weights (section 3.2 of FPR 1).

(c) Storage (section 3.3 of FPR 1).

(d) Export sales (section 3.4 of FPR 1).

(e) Notification of new maximum price (section 3.5 of FPR 1).

(f) Records which must be kept (section 3.6 of FPR 1).

(g) Sales slips and receipts (section 3.8 of FPR 1).

(h) Transfers of business or stock in trade (section 3.9 of FPR 1).

(i) How a figured maximum price is established and how an established maximum price may be changed (section 3.10 of FPR 1).

(j) Adjustable pricing (section 3.11 of FPR 1).

(k) Compliance with the applicable supplement (section 3.12 of FPR 1).

(l) Adjustment of maximum prices of food products under "Government contracts" or subcontracts (section 3.13 of FPR 1).

(m) Applications for adjustment by sellers who have been found to have violated the Robinson-Patman Act (section 3.14 of FPR 1).

(n) Applications for adjustment and petitions for amendment based on wage or salary increases requiring approval of the National War Labor Board (section 3.15 of FPR 1).

(o) Petitions for amendment (section 3.16 of FPR 1).

This supplement shall become effective June 21, 1944.

NOTE: All reporting and record-keeping requirements of this supplement have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 16th day of June, 1944.

Supplement 2 to FPR No. 1—Processed Beans, Processed Macaroni Products and Processed Noodle Products

ARTICLE I—EXPLANATION OF THE SUPPLEMENT

SECTION 1. *Explanation of the supplement.* (a) This supplement establishes maximum prices for sales of processed beans, and of processed macaroni products and processed noodle products (that is, macaroni products and noodle products which have been cooked and combined with sauce). It does not govern sales of macaroni products and noodle products which have not been cooked and combined with sauce.

(b) This supplement applies to sales of processed beans, processed macaroni products and processed noodle products by all persons except wholesalers and retailers (wagon wholesalers, however, are included).

(c) This supplement applies in the 48 States of the United States and the District of Columbia.

(d) This supplement supersedes the General Maximum Price Regulation and Maximum Price Regulation No. 427 as to the commodities and sellers covered. All orders issued under Maximum Price Regulation No. 427 shall remain in effect as orders under this supplement. In addition, any processor who prior to June 21, 1944, established a lawful maximum price under the elective pricing method of section 5 (a) of Maximum Price Regulation No. 427 may, if he wishes, keep that maximum price.

(e) This supplement becomes effective on June 21, 1944.

SEC. 2. *Applicability of Food Products Regulation No. 1.* Important: Not all of the provisions affecting the maximum prices of processed beans, processed macaroni products and processed noodle products are stated in this supplement. Those which are not specifically set forth here are stated in Food Products Regulation No. 1, and they are just as much a part of this supplement as if they were printed here. The "explanation of the regulation" is also a part of this supplement.

The particular sections of Food Products Regulation No. 1 which are applicable to this supplement are listed at appropriate places in the following provisions (in each case, the section number set forth in parentheses is the appropriate section number of Food Products Regulation No. 1). When any applicable section of the regulation is amended, the amendment also is applicable to this supplement.

SEC. 3. *Definitions.* (a) When used in this supplement, the term:

"Processed beans" means dried beans of any variety cooked prior to packaging or in the package and packed with or without pork or sauce. Such beans shall also include dehydrated and frozen forms and may be packaged in any style container hermetically or nonhermetically sealed.

"Processed macaroni products" and "processed noodle products" mean macaroni products and noodle products which have been cooked and combined with sauce.

"Macaroni products" means the class of food prepared by drying formed units of dough made from semolina, durum flour, farina, flour, or any combination of two or more of these, with water and with or without one or more of certain optional ingredients such as milk, whole wheat, soy flour, vegetables and salt and as further defined in the proposed order for Definitions or Standards of Identity of macaroni products of the Food and Drug Administration, as printed in the *Federal Register* on December 22, 1942, 7 F.R. 10728 to 10734, inclusive. Plain noodles (but not chow mein noodles) shall be considered to be a macaroni product for the purposes of this supplement.

"Noodle products" means the class of food prepared by drying formed units of dough made from semolina, durum flour, farina, flour, or any combination of two or more of these, with liquid eggs, dried eggs, egg yolks, frozen yolks, or any combination of two or more of these, with or without water and with or without one or more of certain optional ingredients such as milk, whole wheat, soy flour, vegetables and salt and as further defined in the proposed order for Definitions or Standards of Identity of noodle products of the Food and Drug Administration, as printed in the *Federal Register* on December 22, 1942, 7 F.R. 10728 to 10734, inclusive. The term "noodle products" does not include chow mein noodles.

(b) The definitions of the following terms, set forth in the designated sections of Food Products Regulation No. 1, are applicable to this supplement:

"Person" (section 1.1 of FPR 1).
"Processor" (section 1.2 of FPR 1).
"Distributor" (section 1.3 of FPR 1).

"Primary distributor" (section 1.5 of FPR 1).
"Wholesaler" and "retailer" (section 1.6 of FPR 1).
"Ultimate consumer" (section 1.7 of FPR 1).
"Item" (section 1.8 of FPR 1).
"Container type" (section 1.9 of FPR 1).
"Sale" (section 1.10 of FPR 1).
"Price" (section 1.11 of FPR 1).
"Net delivered cost" (section 1.12 of FPR 1).
"Records" (section 1.14 of FPR 1).

ARTICLE II—PRICING PROVISIONS

SEC. 4. *Maximum prices for sales of processed beans, processed macaroni products and processed noodle products by processors.* (a) The processor's maximum price per sales unit, f. o. b. shipping point, to any class of purchasers for an item of processed beans, processed macaroni products or processed noodle products which he made and sold at any time during the period October 1, 1941 to March 31, 1942, inclusive (this is the "base period"), shall be:

(1) The weighted average price per sales unit, f. o. b. shipping point, charged the same class of purchasers by the processor for such item during the base period, plus

(2) The increase in the cost per sales unit of all the ingredients determined as follows:

(i) The cost per sales unit of the ingredients figured in each case at the maximum price as of July 20, 1943, of the processor's principal supplier to the class of purchasers to which the processor belongs, or, if there is no maximum price, the March, 1942, market price; minus

(ii) The sum of the weighted average actual costs per sales unit of the ingredients used to produce the same item during the base period.

"Weighted average price," as used in subparagraph (1), above, means the total gross sales dollars charged a particular class of purchasers for the item being priced, f. o. b. shipping point, divided by the number of sales units of the item sold to that class of purchasers. All sales contracts made in the regular course of business during the base period shall be included, regardless of date of delivery. Sales contracts made before this period shall not be included, even though delivery was made during the period.

"Cost," as used in subparagraph (2), above, if the price of the processor's supplier is not a delivered price, means the price (maximum or March, 1942, market, as the case may be) plus cost of delivery of purchases in a usual amount to the processor's customary receiving point, from the customary shipping point by the usual mode of transpoirtation.

"Weighted average actual cost," as used in subparagraph (2) (ii), above, means the processor's total cost of each ingredient, figured on a delivered basis at his plant, for the quantity used in producing all his processed beans, processed macaroni products or processed noodle products, divided by the number of units produced.

(b) The processor's maximum price per sales unit for an item of processed beans, processed macaroni products or processed noodle products for which his maximum price originally was established under § 1499.3 (b) of the General Maximum Price Regulation shall be:

(1) The processor's maximum price per sales unit authorized by the Office of Price Administration by order under § 1499.3 (b) of the General Maximum Price Regulation for such item, plus

(2) The increase in the cost per sales unit of the ingredients thereof determined as follows:

(i) The cost per sales unit of the ingredients, figured in each case at the maximum price as of July 20, 1943, of the processor's principal supplier to the class of purchasers to which the processor belongs, or, if there is no maximum price, the March, 1942, market price; minus

(ii) The ingredients cost per sales unit submitted to the Office of Price Administration in the application upon which the maximum price was established under § 1499.3 (b) of the General Maximum Price Regulation.

"Cost" as used in subparagraph (2) (i), above, if the price of the processor's supplier is not a delivered price, means the price (maximum or March, 1942, market, as the case may be), plus cost of delivery of purchases in a usual amount to the processor's customary receiving point, from the customary shipping point by the usual mode of transportation.

SEC. 5. *Maximum prices for sales of processed beans, processed macaroni products and processed noodle products by wagon wholesalers.* Wagon wholesalers shall figure their maximum prices per sales unit for each item of processed beans, processed macaroni products or processed noodle products by adding to their net delivered cost a markup of 25 per cent of such cost. These maximum prices shall be refigured upon receipt of an item whenever there is any change in the net delivered cost.

A "wagon wholesaler" is one who purchases the item being priced and distributes it to retailers or to commercial, industrial or institutional users from an inventory stocked in trucks or other conveyances which are under the supervision of driver salesmen who make delivery at the time and place of sale. Such a wholesaler is a wagon wholesaler only for sales made in this manner.

SEC. 6. *Provisions of Article II of Food Products Regulation No. 1 applicable to this supplement.* The following provisions of Food Products Regulation No. 1 are applicable to this supplement:

(a) Maximum prices for products in new container types or sizes (section 2.2 of FPR 1). In those cases only where the processor has made a change in his container type from tin to glass, he shall add ⅝ cent per pound label weight of his finished product, after adding the "direct cost" of the container in the new type and size as provided by section 2.2(e) of Food Products Regulation No. 1.

(b) Elective pricing method (section 2.4 of FPR 1). The "markup percentage" figure is 150 per cent.

(c) Individual authorization of maximum prices (section 2.5 of FPR 1).

(d) When the seller must figure a delivered price (section 2.6 of FPR 1). However, when figuring a delivered price, any processor whose transportation charge during the period October 1, 1941, to March 17, 1942, was based on the use of his own trucks and who is now compelled to use a common or contract carrier, may add transportation charges figured by the new means of transportation, to the same destination and under the same freight tariff classification, but at the rate in effect during that period.

(e) Uniform prices where the processor or repacker has more than one factory (section 2.7 of FPR 1).

(f) Uniform delivered prices where the seller has customarily been selling on an f. o. b. shipping point basis (section 2.8 of FPR 1).

(g) Maximum prices for sales by primary distributors (section 2.9 of FPR 1).

(h) Maximum prices for sales by distributors who are not primarily distributors, wholesalers or retailers (section 2.10 of FPR 1).

(i) Payment of brokers (section 2.11 of FPR 1).

(j) Special packing expenses which may be reflected in maximum prices for sales to government procurement agencies (section 2.13 of FPR 1).

(k) Treatment of Federal and State taxes (section 2.14 of FPR 1).

(l) Units of sales and fractions of a cent (section 2.15 of FPR 1).

(m) Maintenance of customary discounts and allowances (section 2.16 of FPR 1).

ARTICLE III—MISCELLANEOUS PROVISIONS

SEC. 7. *Reports which processors must file.* (a) Every processor who determines a maximum price under section 4 or 6 (a) of this supplement shall, on or before July 12, 1944, or within 20 days after the maximum price has been established in the manner explained in section 8 (j), below, file with the Office of Price Administration, Washington, D. C., a statement showing:

(1) For each item for which he figures his maximum price under section 4,

(i) The weighted average price per sales unit, figured f. o. b. shipping point, which he received for the item during the base period (October 1, 1941, to March 31, 1942, inclusive) or the maximum selling price for the item authorized by order of the Office of Price Administration under § 1499.3 (b) of the General Maximum Price Regulation;

(ii) The maximum price which he figured for the item under this supplement (where any maximum price is figured on a delivered basis, he shall also show his maximum price figured on an f. o. b. shipping point basis); and

(iii) A list of all his customary allowances, discounts, and other price differentials.

(2) For each item for which he figures his maximum price under section 6 (a), a true copy of the calculations showing his determination of such maximum price.

(b) If a processor reported a lawful maximum price under any provision of maximum Price Regulation No. 427 and his maximum price is not changed by this supplement, he is not required to report that maximum price again under this section.

SEC. 8. *Provisions of Article III of Food Products Regulation No. 1 applicable to this supplement.* The following provisions of Food Products Regulation No. 1 are applicable to this supplement:

(a) Restrictions on sales to primary distributors (section 3.1 of FPR 1).

(b) Weights (section 3.2 of FPR 1.)

(c) Storage (section 3.3 of FPR 1).

(d) Export sales (section 3.4 of FPR 1).

(e) Notification of new maximum price (section 3.5 of FPR 1).

(f) Records which must be kept (section 3.6 of FPR 1).

(g) Authority of regional and district offices to audit reports (section 3.7 of FPR 1).

(h) Sales slips and receipts (section 3.8 of FPR 1).

(i) Transfers of business or stock in trade (section 3.9 of FPR 1).

(j) How a figured maximum price is established and how an established maximum price may be changed (section 3.10 of FPR 1).

(k) Adjustable pricing (section 3.11 of FPR 1).

(l) Compliance with the applicable supplement (section 3.12 of FPR 1).

(m) Adjustment of maximum prices of food products under "Government contracts" or subcontracts (section 3.13 of FPR 1).

(n) Application for adjustment by sellers who have been found to have violated the Robinson-Patman Act (section 3.14 of FPR 1).

(o) Applications for adjustment and petitions for amendment based on wage or salary increases requiring the approval of the National War Labor Board (section 3.15 of FPR 1).

(p) Petitions for amendment (section 3.16 of FPR 1).

This supplement shall become effective June 21, 1944.

NOTE: All reporting and record-keeping requirements of this supplement have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 16th day of June, 1944.

Pea Picking Rate in Idaho

The Director of Labor of the War Food Administration has established 60 cents per full bushel hamper as the maximum wage rate for picking green peas for market in the following eight Idaho counties: Ada, Adams, Canyon, Gem, Owyhee, Payette, Valley and Washington.

Mexican Pineapple Crop

Mexico's 1944 pineapple crop is officially estimated at 65,201 metric tons, an increase of about 5,000 tons compared with 1943, but there is some trade opinion that the estimate may be slightly high, according to the Department of Commerce. Losses from lack of transportation may run as high as 35 to 40 per cent in some districts.

Amendment Lowers Industrial User Factor for Butter

Industrial user factors for meats-fats for the three-month allotment period beginning July 1, 1944, were specified June 13 by the Office of Price Administration in Amendment No. 33 to Revised Supplement 1 to Ration Order 16. Principal changes are these:

1. The factor for butter is being reduced to 7.8 from 8, and for margarine to 2.0 from 5.0.

2. All meats continue to carry a 0.0 factor, since virtually all industrial uses of meat are point-free meat items going into such products as canned soups and beef extracts. However, any industrial user who during his base period did use meats that currently have a point value (beef steaks or roasts) may apply to OPA for an allotment.

Advance Notice on Sweet Potato Ceilings for Growers

Specific maximum dollar-and-cents ceiling prices (f.o.b. Sunset, La.) will be put on the 1944 crop of sweet potatoes soon, the Office of Price Administration announces. Prices will remain under the present "freeze" until regulation can be drawn up. New regulation will include specific mark-ups for sales by all distributors, other than retailers, OPA will establish cents-per-pound mark-ups at retail.

F.o.b. prices in the table below are announced in advance of the regulation to provide information to sweet potato growers.

BUSHEL CONTAINERS MINIMUM NET WEIGHT —45 LBS. FOR CURED; 50 LBS. FOR GREEN

July and August	$3.05
September 1-15	2.50
September 16 to October 31	1.90
November 1-15	2.20
November 16 to January 31	2.60
February	2.70
March	2.90
April	3.00
May and June	3.15

The maximum price for sweet potatoes delivered to a terminal market will be the basing point price plus transportation charges from Sunset, La.

SHRIMP INSPECTION FEES

Rates Covering Initial Applications and Extension are Increased

The *Federal Register* for June 15 publishes amendments to the Federal shrimp inspection regulations which increase the fees required of shrimp packers.

The amended regulations increase from $184.50 to $202.50 the advance and monthly deposit required with each application for an initial inspection period. They also increase, from $123 to $135, the corresponding deposits for an extension of the inspection period, and increase from $4.10 to $4.50, the daily deposits during a terminal period of less than a month.

Text of the amendments, as published in the June 15 *Federal Register* follows:

Under the authority of Section 702A of the Federal Food, Drug and Cosmetic Act, each of the sections hereinafter specified, of the regulations for the inspection of canned shrimp, published in the *Federal Register* of July 2, 1942, and as amended in the *Federal Register* of June 10, 1943, is hereby amended as indicated below:

In § 155.00 (a), "$184.50" is changed to "$202.50."

In § 155.02 (a), "$123" is changed to "$135."

In § 155.12 (b), "$123" in each instance where it appears is changed to "$135"; "$184.50" in each instance where it appears is changed to "$202.50"; "$4.10" is changed to "$4.50."

These amendments shall become effective upon their publication in the *Federal Register* but shall apply only to service to be rendered after July 1, 1944. All applications for such service to be rendered after July 1, 1944, shall be submitted in accordance with these regulations as amended hereby.

Tennessee Potato Support

Beginning and closing dates for the 1944 Irish potato support-price program in Tennessee have been announced by the War Food Administration. The program, which became effective June 13, will be continued, if necessary, for a period of 25 days, exclusive of Sundays and holidays. All operations carried on to support potato prices in Tennessee will be in accordance with the provisions of the Irish potato support-price program announced on March 31 by WFA.

The support-price program for Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina and Texas had been announced previously.

Congress Extends Price Control, Wage Stabilization Legislation; Substantial Differences Exist Between House and Senate Versions

The Senate passed on June 9 its bill (S. 1764) to extend the price control and wage stabilization legislation until December 31, 1945. A few days later, on June 14, the House also passed its version of legislation to extend these acts until June 30, 1945. Both the House and Senate bills substantially amend the present price control law and also differ from each other in several important respects.

Perhaps the greatest controversy in the House arose over the rejection of the Brown cotton pricing amendment, almost identical with the Bankhead amendment adopted by the Senate to provide for processors' increased costs in maximum prices, and over the adoption of the Dirksen amendment to allow court review of OPA orders in Federal district courts. Throughout the House debates, particularly in the controversial debate on the Bankhead-Brown cotton amendment, the fear was voiced that the President would veto the legislation if the present law were too drastically amended. The Senate bill, with the House amendments, is now in conference and it is hoped by Congressional leaders that the amendments to which the Administration leaders particularly object can be eliminated in conference to produce a bill which will be acceptable to the President.

The chief differences between the Senate and House bills are on the Bankhead cotton amendment, guarantee of parity prices to farm producers, subsidies, House prohibition of the OPA highest price line regulations for retail stores, and the Dirksen court review amendment allowing court review in Federal district courts.

Principal Differences Between House and Senate Bills

The various differences between the House and Senate bills and the desire to produce a bill which will not be vetoed by the President indicate that the Conference Committee may recommend substantial compromises and changes on the points at issue between the two houses. For this reason no attempt is made at this time to discuss the precise legal effect of the House and Senate amendments. However, canners will be interested in knowing the more important action taken by the House.

The Bankhead amendment adopted by the Senate would require OPA to establish maximum prices for cotton textile products which is not less than the sum of the raw material cost plus transportation cost, plus processing cost, plus a reasonable profit on each item. For the purposes of the amendment, the raw material cost was to be deemed to be not less than parity. This amendment in effect would establish a "minimum" maximum price for each cotton textile product.

The Brown amendment, identical to the Bankhead amendment in the Senate, was attacked on the grounds that it was inflationary and special interest legislation.

Upon defeat of the amendment by a vote of 191 to 87, the House adopted an amendment offered by Representative Pace of Georgia. This amendment would require that a processor or manufacturer of any agricultural commodity shall not charge or collect a maximum price established for his agricultural commodities unless the producer of the agricultural commodity is paid either parity or the January 1-September 15, 1942, price, whichever is higher. The amendment further provides that "upon failure of the processor or manufacturer to submit satisfactory proof thereof such processor or manufacturer may charge or collect not more than 90 per cent of the maximum price" established for his processed article.

This amendment puts a definite burden and obligation upon the processor to see that the farmers are paid the highest of the 1942 or parity prices for the raw product. It also differs from the Bankhead-Brown amendment in not guaranteeing to the processor any maximum price reflecting the increased cost which might result from this requirement. The effect apparently would be that the processor who has not been previously paying the higher of these two prices, either parity or the 1942 price, would be forced to absorb the difference, or bear the penalty of a 10 per cent reduction of his maximum price.

The House also adopted an amendment somewhat similar to the Pace amendment requiring persons who receive subsidy payments to submit evidence that the producer of the agricultural commodity has been paid a price "not below the price standards established by the Act of October 2, 1942." These price standards are either parity or the January 1-September 15, 1942, price, whichever is higher. This amendment, offered by Representative Kleberg, makes it unlawful to "pay any subsidy to the producer of any product manufactured in whole or substantial part from any agricultural commodity" unless the processor submits proof that he has paid the required prices to the farm producer. This would affect all commodities, including fruits and vegetables for processing. The Pace and Kleberg amendments would have the effect of guaranteeing parity prices to farmers on all agricultural commodities.

The Dirksen amendment accepted by the House is expected to be another matter in which the conferees will have substantial controversy. This amendment, which was adopted by the House by a vote of 200 to 181, would allow any person to appeal from an OPA denial of a price protest to either the Emergency Court of Appeals or a Federal district court. In making the appeal to the Federal district court, the protestant would be allowed to ask that the price regulation be enjoined or set aside. This amendment in effect would apparently take away the exclusive jurisdiction of the Emergency Court of Appeals to decide the validity of OPA price regulations. No similar provision is contained in the Senate bill.

Other amendments adopted by the House which were not adopted by the Senate include a provision to raise the loan rate on basic and non-basic agricultural commodities from 90 per cent to 95 per cent of parity.

In addition, the House adopted an amendment proposed by Representative Hartley which prohibits OPA from continuing its so-called highest price line regulations. The amendment reads that:

"Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent, or to require any person to limit his stock of goods or sales to the highest price line offered for sale at any time, and any rule, regulation, or order inconsistent with the provisions of this subsection shall have no further legal effect."

The highest price line regulations of the OPA have been strongly attacked by retailers on the grounds of discrimination against established trade outlets.

The House and Senate bills also differ in their treatment of subsidies. The Senate bill provides that the present subsidy program may continue until June 30, 1945, after which time no government corporation may spend any money for any subsidy program unless it has first obtained a specific appropriation for that purpose. The House, however, has only provided that no additional agricultural commodities may be designated by the President as strategic or critical materials for the purpose of authorizing RFC subsidy operations. This is a relatively minor limitation on subsidies in comparison to the Senate provision.

In contrast to the action of the Senate, which exempted from wage control by the War Labor Board all wages of persons under $37.50 per week, the House defeated a similar proposal made by Representative Andresen of Minnesota. Proponents of the House amendment contended that the white-collar worker should be given increases to compensate for the increased cost of living since this group was unorganized and did not have any means of obtaining adequate relief. Consequently, this difference must also be resolved in conference.

Other House Amendments

Numerous amendments were offered from the floor of the House during the week of debate. An attempt by Representative Disney to increase the price of oil to not less than 80 per cent of parity for oil was first adopted by the House and then rejected. The House also rejected various attempts to exempt specific commodities from all price control, including fresh fruits and berries, raw furs and fish. However, the House did exempt from all price control the sale of watermelons.

An amendment was offered by Representative Gifford, after House rejection of exemption of fish, which would have required maximum prices for fish to be not less than the higher of either the highest average price in 1942 or the highest price or wages paid between January 1 and September 15, 1942. This amendment was first accepted and then later rejected by a vote of 200 to 107.

The House also adopted an amendment offered by Representative Wolcott of Michigan, which authorizes the Price Administrator to adjust maximum prices to correct gross inequities regardless of other provisions of the statute.

Other miscellaneous amendments were adopted which permit any person who is being investigated by OPA to have counsel attend the OPA investigation hearing, and to require the Administrator to give 15 days' notice to farmers in the event of a proposed change of maximum prices for farm products.

The House also rejected by an overwhelming vote an amendment by Representative Towe to eliminate the word "general" from Section 2(j) of the Act. This amendment would have changed the present law, which now authorizes the Price Administrator to fix maximum prices on the basis of standards of specifications only if the specifications have been in general use in the industry, to allow the establishment of maximum prices on such standards if they have been only in "use" in the industry.

Points of Similarity Between House and Senate Bills

Although the definite similarity between the House and Senate bills as they were reported from Committee was badly mauled during the course of the House and Senate debates, the provisions concerning filing of protests and stays of OPA enforcement proceedings remain substantially the same in both bills. These provisions, however, may be drastically changed if the Dirksen amendment is finally adopted.

The House followed the Senate action with respect to civil suits by adopting an amendment almost identical with the Chandler-Weeks amendment accepted by the Senate. This amendment allows any defendant in a civil action brought by OPA to make the defenses either that his violation was not willful or that all practical precautions against occurrence of the violation had been taken. This amendment which was the subject of a long debate in the Senate passed the House by a substantial vote.

OPA to Restore Point Values on Pickled, Brandied Fruits

Point values on pickled, spiced and brandied fruits will be restored July 2, it is stated in the weekly bulletin of the Office of Price Administration, "Food Facts of Interest to the Trade." In December, 1943, these products were removed from the ration program to allow dealers and others to dispose of the stocks they had on hand when rationing began. They are being put back on rationing because old stocks have been moved and it is not desirable for more of such products to be put up than will move under rationing.

Decision to restore the points was announced far enough in advance, OPA stated, to allow processors and dealers time to make any needed adjustments. The restored point values will be the same as on other type packs of the same fruit, it was stated.

Industrial User Factor Raised for Canned Vegetables

Industrial user factors for rationed processed foods were specified by the Office of Price Administration for the allotment period beginning July 1, 1944, and ending September 30, 1944, in Amendment No. 17 to Second Revised Supplement 1 to Revised Ration Order 13, which became effective June 15.

The factor for canned and bottled fruits remains unchanged at 11. The factor for canned and bottled vegetables is increased 4, from 7 to 11. The dry beans factor is unchanged at 2 and the factor for jellies, jams, marmalades, preserves and fruit butters is increased from 4 to 5.

Since frozen and dried and dehydrated fruits and frozen vegetables are at zero point value, no factor was announced for these foods.

RAZOR CLAM CEILINGS

Prices Increased by OPA on Several Minor Styles of Canned Pack

Consumer ceiling prices for canned razor clams have been increased by 5 to 7 cents per can on several minor styles of pack, the Office of Price Administration has announced. However, the prices will remain the same on 75 per cent of the pack, OPA stated.

These increases, provided for in Amendment 1 to Maximum Price Regulation No. 448, which became effective June 15, were necessary in order to encourage the processing of this seafood. Production of canned razor clams has decreased since 1942, because the prices fixed for this item at that time were too low in relation to increased raw material costs, OPA said. Canners faced out-of-pocket losses in their operations, the release stated.

There is no increase to consumers in the price of minced razor clams packed in ½ Flat size can (net drained weight of 3½ ounces of clams). Seventy-five per cent of the total pack of razor clams is processed in this size can. The price of the number 1 Tall can is increased by 7 cents. This size can contains a net drained weight of 7 ounces of whole razor clams.

The new wholesale prices, f. o. b. car at the shipping point nearest the cannery for razor clams within the United States, are as follows:

Size of can	Price per dozen
½ Flats (Razor minced)	$2.25
No. 1 E.O. (Razor minced)	3.25
No. 1 E.O. (Razor whole)	3.10
No. 1 Tall (Razor whole)	4.45

The above prices also are f. o. b. car at Seattle, Washington, for razor clams canned in territory outside the continental United States.

The average March, 1942, ceiling prices at wholesale for these sizes were $2.25, $2.75, $2.50 and $4.00 respectively.

OPA said that it intends to fix ceiling prices for fresh razor clams in the near future. At present this fresh item is uncontrolled.

PACK REPORTING URGED

Administrator of Order 22.6 Stresses Importance of Filing FDA-685

Merritt Greene, Administrator of the set-aside order (WFO 22.6), has requested that the National Canners Association, through the medium of the INFORMATION LETTER, call attention to the importance of filing Form FDA-685, which provides for the reporting of total packs.

In a letter to the Association, Mr. Greene stated that—

"It is noticed that a number of canners are in violation of this order by failing to report within a specified limit of 15 days after the completion of their pack. Each canner should report on this form (FDA-685) after completion of his pack, using a separate form for each item packed at each plant.

The provisions in the order are clearly set forth in the following paragraphs:

(2) *Reports.* Each canner and each processor shall, within 15 days after he has completed a seasonal pack, or in the instance of a non-seasonal product, at such times as may be prescribed, mail to or file with the Food Distribution Administration, United States Department of Agriculture, a report thereof in such form as may be prescribed from time to time by the Director.

(h) *Violations.* Any person who wilfully violates any provision of this order or who by any act or omission falsifies records to be kept or information to be furnished pursuant to this order or wilfully conceals a material fact concerning a matter within the jurisdiction of any Department or agency of the United States may be prohibited from receiving or making further deliveries of any material subject to allocation and such further action may be taken against him as the Director deems appropriate, including recommendations for prosecution under section 35a of the Criminal Code (18 U. S. C. 1940 ed. 80), under paragraph 5 of section 301 of Title III of the Second War Powers Act, and under any and all other applicable laws."

Fresh Apple Set-aside Ended

Shipments of fresh apples from the 1943 crop are about completed, and the War Food Administration has announced termination of War Food Order 88 (formerly FDO 88), effective June 13. The order, in effect since November 6, 1943, required 15 per cent of the apples grown or located in Washington and Oregon and meeting the standards for Fancy or higher grades in the respective States, to be set-aside for purchase by the armed services or government agencies.

New Form for Herring Offers

The Office of Distribution, War Food Administration, announced June 14 that it will receive offers for the sale of salted, smoked and pickled herring from processors in the United States on Form PBP 110, Offer of Sale, beginning immediately.

For some time past, purchases of this type of fish have been made pursuant to the terms and conditions of Announcement FSC-1565, dated July 17, 1943, which announcement is now obsolete.

Offers may be submitted at any time to the Procurement and Price Support Branch, Office of Distribution, War Food Administration, Washington 25, D. C., on the new Form PBP 110, in an original and four completely executed copies. Acceptance will be made within 15 days after the date of the offer and notice of acceptance will be given by telegram. Offers will be accepted by the Commodity Credit Corporation.

June 1 Report by USDA Shows 22% Gain in Fruit Prospects

June 1 conditions indicate that deciduous fruit production in 1944 may be more than 1943 by as much as 22 per cent and about 7 per cent above average, the U. S. Department of Agriculture reports.

The peach crop is indicated to be 17 per cent above average and about 60 per cent more than the short 1943 crop.

Pear production is indicated 3 per cent below average. Cherry prospects are 27 per cent above average and 60 per cent above the short 1943 crop. Sweet cherry production is estimated about 10 per cent above last year and sour cherry production is expected to be more than 2½ times the short 1943 crop.

Commercial apple production is indicated to be somewhat larger than the crop harvested in 1943.

Grape production prospects are for larger crops in the eastern States but it is not expected that the California crop will be as large as the record 1943 harvest, although conditions are again favorable in that State.

The apricot crop is indicated to be more than three times the 1943 record small crop and about one-third above average.

California plums show a 5 per cent decline from 1943. The California prune crop is short with production indicated about 21 per cent below last year.

CANNING CROP CONDITIONS

June 1 Report by USDA Covers Peas, Corn, Snap Beans and Tomatoes

Through the last two weeks of May the conditions for planting and growing snap beans, sweet corn and tomatoes for processing were more favorable than they were for green peas, according to the Department of Agriculture. And on June 1 prospects for green peas were not too gloomy because the adverse effects of dry weather in May were confined to the early crop in Delaware, Maryland, and Virginia. Planting was delayed in most of the other green pea producing States by rainy weather, but after June 1 the temperatures began to rise and more clear weather aided the crop in overcoming the early season delay. Canning of green peas got under way in Virginia the latter part of May.

Growers succeeded in preparing enough acreage in May so that they could start planting snap beans and sweet corn seed early in June. It was expected that most of the acreage will be planted before the middle of June—even including Maine, where the season is earlier than usual.

Setting tomato plants in the fields was carried on through May under favorable conditions. But in some areas growers experienced difficulty in obtaining an adequate supply of plants. This was partially overcome through the use of home-grown plants or by planting tomato seed directly in the fields. Progress was slowed up in Colorado, Utah, and the Ozarks by cool weather in May but an ample supply of moisture was stored in the soil and warmer weather in early June should enable the plants to overcome the delay.

TEXT OF CANNED FOOD RESERVATION ORDER

The set-aside percentages prescribed in Amendment No. 1 to War Food Order 22.6 were announced by Lee Marshall, Director of Distribution of WFA, at the mid-year meeting of the Association's Board of Directors, and were published in the INFORMATION LETTER for May 27. Last week's LETTER carried a summary of WFO 22.6. Text of the amended reservation order is reproduced below.

War Food Order No. 22-6, 9 F.R. 4319 (formerly designated as Director Food Distribution Order No. 22-6, as issued by the Director of Food Distribution on February 11, 1944, 9 F.R. 1824), is amended to read as follows:

§ 1425.8 Quota Restrictions and Allocations

(a) Definitions.

The definitions contained in War Food Order No. 22 as amended, 9 F.R. 4319 (formerly designated as Food Distribution Order No. 22, as originally issued by the Secretary of Agriculture on February 19, 1943, 8 F.R. 2243, and as amended, 8 F.R. 6397), shall, when used herein, have the same meaning as set forth in said War Food Order No. 22, as amended; and when used in this order, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(1) "Quota period" means, with respect to sauerkraut, the period from September 1, 1944, to August 31, 1945, both inclusive; and, with respect to all other commodities required to be set aside pursuant to this order, the period from January 1, 1944, to December 31, 1944, both inclusive.

(2) "Base period" means, with respect to sauerkraut, the period from September 1, 1941, to August 31, 1942, both inclusive; and, with respect to all other commodities required to be set aside pursuant to this order, the period from January 1, 1942, to December 31, 1943, both inclusive.

(3) "Base pack" means: (i) when applied to sauerkraut, the total amount, by net weight, of all types, styles, varieties, and grades, canned by the respective canner or processor during the base period; and (ii) when applied to each canned food, other than sauerkraut, listed in Column A of Table 1 attached hereto, and by this reference made a part of this order, one-half the total amount, by net weight, of all types, styles, varieties, and grades of such food canned by the respective canner or processor during the base period: *Provided*, That if the respective canner or processor canned any particular food, other than sauerkraut, listed in said Column A of Table 1 during only one of the two calendar years of the base period, his base pack for that food shall be his total pack, by net weight, of such food during the said calendar year in which he canned the said food.

(b) Applicability of this order.

The terms and conditions of this order shall be applicable to (1) all canned vegetables, canned fruits, canned vegetable juices, and canned fruit juices listed in said Column A of Table 1 which are packed during the quota period in any of the 48 States of the United States or the District of Columbia, and (2) all canned pineapple and canned pineapple juice which are packed during the quota period in the Territory of Hawaii.

(c) Set-side restrictions.

Each canner or processor who packs, during the quota period, any canned vegetable, canned fruit, canned vegetable juice, or canned fruit juice designated in said Column A of Table 1 shall, to the extent that the quantity so packed may be adequate, set aside and thereafter hold for sale and delivery to government agency from his pack of each such product, for the quota period, a quantity equivalent to the quantity obtained by applying the percentage for the particular product listed in Colmun D of Table 1 against his base pack of that product. If the type, style, variety, or grade of the particular product is specified in the aforesaid Table 1, the portion set aside shall, so far as available, be in the type, style, variety, and grade so specified; but other types, styles, varieties, or grades in the possession of a particular canner or processor as may be specified by the procuring government agency shall be substituted to the extent that those specified in said Table 1 have not been packed by such canner or processor. In the event a canner or processor is preparing to pack, during the quota period, any canned vegetable, canned fruit, canned vegetable juice, or canned fruit juice, listed in Column A of said Table 1, which he did not pack during the base period and for which unlimited tinplate is availabe under § 3270.31 of Conservation Order M-81, issued by the War Production Board on February 11, 1942, as amended (7 F.R. 947, 10321, 8 F.R. 14455, 9 F.R. 82, 5209), he shall so inform the Director by letter, and state therein the quantity of such product which he anticipates that he will pack; and such canner or processor shall set aside for sale and delivery to government agency a portion of his pack of each such product for the quota period equivalent to the quantity obtained by applying the percentage for the particular product, listed in Column D of Table 1, against his total production of such product during the quota period.

(d) When entire pack not set aside for Government agency.

(1) In the event a canner or processor packs any canned vegetable, canned fruit, canned vegetable juice, or canned fruit juice, listed in Column A of Table 1, for nongovernmental requirements as well as for government agency, the portion of each such product required to be set aside by him for government agency shall be set aside as follows: (i) At least two-thirds of the set-aside portion shall be taken from the first preference grade of the canned product, as specified in Column F of Table 1, to the extent that such preference grade is packed by the respective canner or processor but, if the quantity of the said first preference grade which is packed by such person is not sufficient to meet that requirement, the total quantity of such first preference grade shall be set aside for government agency; (ii) To the extent that the quantity set aside for government agency from the first preference grade in accordance with the provisions of (i) above may fail to complete his set-aside quota, he shall set aside from his production of the second preference grade of the canned product, as specified in Column G of Table 1, such quantity to complete his set-aside quota but, if the quantity of said second preference grade packed by such person is not sufficient to complete such set-aside quota, the total quantity of such second preference grade shall be set aside for government agency; and (iii) To the extent that the quantities set aside for government agency from the first and second preference grades in accordance with the provisions of (i) and (ii) above may fail to complete his set-aside quota, he shall set aside from his production of his third preference grade of the canned product, as specified in Column H of Table 1, sufficient of such quantity to complete his set-aside quota as may be available: *Provided*, That, if there is an insufficient quantity of all three preference grades to complete his set-aside quota, he shall set aside from such other grades in his possession as may be designated by government agency a quantity of such other grades sufficient to complete his set-aside quota to the extent that such other grades packed by him are available.

(2) In the event a canner or processor packs a canned product covered hereunder partly in tinplate containers and partly in glass containers, the portion to be set aside for government agency from the several preference grades of such product in accordance with the provisions of (d) (1) hereof shall be that which is packed in tinplate to the extent that the respective grades are so packed by such person; and the particular product packed by such person in glass containers shall be set aside from any such preference grade only in the event and to the extent necessary to meet any such deficiency when there is not enough of the respective product of that preference grade packed by such canner or processor in tinplate to meet the set-aside requirements for such grade.

(3) Within the limits of, and subject to the restrictions set forth in, (d) (1) and (2) hereof, a minimum of one-half and a maximum of two-thirds (except with the consent of the particular procuring government agency) of the quota of any canned product for government agency shall be set aside in the largest can size specified for that product in Column I of Table 1 to the extent that the product is packed by the respective canner or processor in such largest can size in the respective preference grades, and the remainder, if any, of the set-aside quota for the canned product shall be in the other can sizes, if any, specified in said Column I of Table 1: *Provided*, That the portion of the set-aside quantity of the canned product represented by the contingency reserve percentage for such product shown in Column C of Table 1 may, at the option of the particular canner or processor, be packed and set aside in any can size permitted under the aforesaid Conservation Order M-81, as amended.

(4) Each canner and each processor who, pursuant to the provisions of this order, is required to set aside any commodity listed in the aforesaid Column A of Table 1 shall be deemed to have met

the set-aside requirements of this order if he sets aside the entire quantity of the respective commodity packed by him and in his possession on and after June 12, 1944, if such amount is not less than the quantity of the respective commodity required to be set aside by such person pursuant to the provisions of War Food Order No. 22-6 in effect prior to such date.

(e) Reports.

(1) Each canner and each processor of sauerkraut shall complete Form FDA-685 with respect to sauerkraut canned by him during the base period and submit such completed form to the Director within 15 calendar days after the effective time hereof.

(2) The reports required by § 1425.1 (c) of War Food Order No. 22, as amended, shall be submitted on Form FDA-685. The reports shall be submitted to the Director within 15 calendar days after the completion of the pack.

(f) Purchase, inspection, and specifications.

The Army of the United States is hereby allocated the quotas prescribed herein for government agency, and the Army may purchase said quotas for its own account or the account of other government agencies whenever it has agreed with such agencies to do so. The Army of the United States and the Office of Distribution, respectively, are authorized to inspect and grade such canned foods pursuant to § 1425.1 (d) of War Food Order No. 22, as amended. The Army of the United States is authorized to issue specifications at any time with regard to the processing, packing, containers, container treatment, can marking, labeling, boxing, and strapping of such canned foods pursuant to § 1425.1 (b) (5) of War Food Order No. 22, as amended.

(g) Provisions of War Food Orders No. 22-4, as amended, and 22-5, as amended, not affected.

The provisions of this order shall not be considered as rescinding or modifying the provisions of War Food Order No. 22-4, as amended (8 F.R. 6573, 11590, 9 F.R. 4319), or the provisions of War Food Order No. 22-5, as amended (8 F.R. 16097, 9 F.R. 2969, 4319).

(h) Effective date.

This order shall become effective at 12:01 a. m., e. w. t., June 12, 1944. With respect to violations of War Food Order No. 22-6, liabilities incurred, or appeals taken prior to the effective time of this amendment, said War Food Order No. 22-6 shall be deemed to be in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violation, right, liability, or appeal.

NOTE.—All reporting requirements of this order have been approved by, and subsequent reporting and record-keeping requirements will be subject to the approval of, Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 9th day of June, 1944.

TABLE 1.—CANNED VEGETABLES, CANNED FRUITS, CANNED VEGETABLE JUICES, AND CANNED FRUIT JUICES

A	B	C	D	E	F	G	H	I
Product	Percentage of base pack			Type, style, variety (sequence does not denote preference)	Grade preferences			Can size
	Specific reserve	Contingency reserve	Total (Cols. B & C)		First	Second	Third	
Apples	50	*6	65	Heavy pack	Standard	Fancy		10.
Applesauce	20	*3	23		Fancy	Standard		10-2.
Apricots	90	*10	100	Halved, unpeeled	Choice	Standard		10-2½.
Berries [1]	68	*7	75		Water pack	(2)		10.
Blueberries	68	*7	75		Water pack	(2)		10.
Cherries R. S. P.	90	*10	100	Water pack	Standard			10-2.
Fig	38	*4	42	Kadota	Choice	Fancy		10-2½.
Fruit cocktail	68	*7	75		Choice	Fancy		10-2½.
Peaches	67	*7	74	Yellow clingstone halved or sliced.	Choice	Top Std.[3]		10-2½.
				Yellow freestone halved or sliced.	Choice	Fancy		10-2½.
Pears	71	*7	78	Bartlett, halved	Choice	Top Std.[3]	Fancy	10-2½.
Pineapple	54	*6	60	Sliced, crushed, chunks, tidbits (except cocktail tidbits).	Fancy	Choice	Std.	10-2½-2.
Pineapple juice	57	*7	64		Fancy			10-3 cyl.-2.
Asparagus	43	4	47	All green or culturally bleached	Fancy cut	Fancy spear		10-2½-2.
Beans, lima	56	6	62	Fresh	Extra Std.	Top Std.[3]	Fancy	10-2.
Beans, snap	47	5	52	Green, cut; Wax, cut	Extra Std.	Top Std.[3]	Fancy	10-2½-2.
Beets	49	5	54	Cut, quartered, diced, sliced	Fancy	Top Std.[4]		10-2½-2.
Carrots	145	5	150	Diced	Fancy	Top Std.[4]		10-2½-2.
Corn, Sweet [5]	25	3	28	White, yellow, cream style, whole kernel.	Fancy or extra Std.	Top Std.[3]		10-2.
Peas	36	4	40	Alaska 2, 4 sieve; sweet 3-sieve and larger, ungraded.	Extra Std.	Top Std.[3]	Fancy	10-2.
Pumpkin or squash	17	2	19		Fancy	Top Std.[4]		2½.
Sauerkraut	36	0	36		Fancy	Top Std.[4]		10-2½.
Spinach	48	5	53		Fancy	Top Std.[4]		10-2½-2.
Tomatoes	43	4	47		Extra Std.	Top Std.[3]	Fancy	10-2½-2.
Tomato catsup	48	5	53		Fancy 30–33% solids.	Fancy 33% solids or over.	Fancy 25–29% solids.	10-3 cyl. 2½-2 14 oz. glass or larger.
Tomato juice	60	6	66		Fancy			10-3 cyl.-2.
Tomato puree	27	3	30	Heavy (minimum specific gravity—1.045).	Fancy			10.
Tomato paste	26	3	29		Fancy			10-2½-2-6 oz.

*Indicates that Government intends to purchase all of contingency reserve in addition to the specific reserve.

[1] Blackberries, boysenberries, loganberries, youngberries only. Percentage applies to combined pack of these four varieties.

[2] Syrup pack not desired.

[3] Top standard means 70–74 inclusive as defined in terms of U. S. grades.

[4] Top standard means 80–84 inclusive as defined in terms of U. S. grades.

[5] Full inside enamel cans required. Number 10 cans to be used for whole kernel only.

INSERT—N. C. A. INFORMATION LETTER NO. 990

OFFICE OF PRICE ADMINISTRATION

FOOD PRODUCTS REGULATION 1

General Pricing Provisions for Certain Food Products (Group I)

(Document No. 32989)

PART 1351—FOOD AND FOOD PRODUCTS

§ 1351.374

[FPR 1]

GENERAL PRICING PROVISIONS FOR CERTAIN FOOD PRODUCTS (GROUP I)

A statement of the considerations involved in the issuance of this regulation has been issued and filed with the Division of the Federal Register.*

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AUTHORITY: § 1351.374 issued under 56 Stat. 23, 765; Pub. Law 151, 78th Cong.; E.O. 9250, 7 F.R. 7971; E.O. 9328, 8 F.R. 4681.

EXPLANATION OF THE REGULATION

The purpose of this regulation is to gather into a single document the provisions most commonly used in fixing maximum prices for certain food products in sales by processors, repackers, primary distributors and intermediate sellers (but not wholesalers or retailers).

Taken by itself, the regulation names no maximum prices. These are printed in separate documents which are issued as "supplements" to the regulation. For example, the basic maximum prices for canned grapefruit juice are set forth in a separate supplement which contains the provisions which apply only to packed citrus products. It is only the more general provisions, applicable to a number of commodities, which are collected here. Compliance with maximum prices, it is expected, will be made easier by this standardization of generally applicable provisions and by including them in a single document rather than in many separate regulations.

Moreover, the provisions of this regulation apply to particular food products only as they become parts of these supplements. Thus, for example, whether or not section 1.5 (meaning of "primary distributor") becomes a part of a particular supplement depends upon whether section 1.5 is stated in that supplement to be part of it. Not all the sections of this regulation will apply to every supplement, and when particular sections are not listed in a supplement, they are to be disregarded for the purposes of that supplement.

NOTE: In many sections of this regulation, reference is made to "the effective date of the applicable supplement". Because food products may be added from time to time to a given supplement, "effective date of the applicable supplement" shall mean the date when the item being priced is first included in it.

ARTICLE I—GENERAL DEFINITIONS

NOTE: A seller is sometimes in doubt as to how to determine his maximum price because he is not certain what kind of seller he is under the regulation. This happens most frequently in those cases where the seller manufactures some of the products he sells, and buys the rest. For example, he may manufacture and sell catsup, but only distribute the spaghetti sauce, salad dressing, and other products he sells. When pricing his catsup, he may be in doubt whether to price it as a "distributor" (since that is his general business) or as a "processor" (since he is a manufacturer of catsup). It is desirable, therefore, to explain how the names used in this regulation and its supplements apply to various kinds of sellers.

When classifying a seller, this regulation is concerned only with the way he handles the particular kind and brand (if any) of product which he is pricing. For example, if he is pricing "Atlas" brand canned corn, the only question is how he handles "Atlas" brand corn. How he sells "Atlas" brand *peas* or "*Jones*" brand corn makes no difference. Thus, even if the seller is in the general business of wholesaling, and therefore ordinarily thinks of himself as merely a "wholesaler", he is a "processor" when pricing the "Atlas" canned corn he sells if he manufactures that brand of canned corn.

Moreover, the seller is a "processor", with a processor's maximum price, with respect to all the "Atlas" brand canned corn which he sells, even though he makes only a part of it. The reason for this rule is that if in each transaction the seller were to have more than one maximum price for the same product, the buyer would have no way of knowing which price was applicable and the lower ceiling would be unenforceable.

In other words, the important thing is whether the seller manufactures the particular kind and brand of product being priced and not how he carried on his general food business.

Sec. 1.1

SECTION 1.1 *Meaning of "person".* "Person" means an individual, corporation, partnership, association, any other organized group of persons, and their legal successors or representatives. The term includes the United States, its agencies, other governments, their political subdivisions and their agencies.

Sec. 1.2

SEC. 1.2 *Meaning of "processor".* "Processor" means a person who pro-

*Copies may be obtained from the Office of Price Administration.

cesses any part of what he sells of the kind and brand of product being priced. The term includes a person who has the goods "custom-packed" or "toll-packed" by another.

Example: (See note above to Article I)

Sec. 1.3

SEC. 1.3 *Meaning of "distributor".* "Distributor" means a person who purchases all he sells (for his own account) of the kind and brand of product being priced and resells it without processing any part of it. However, the term does not include such a seller when he is reselling particular goods which he has repackaged (see section 1.4).

Example: (See note above to Article I)

Sec. 1.4

SEC. 1.4 *Meaning of "repacker".* "Repacker" means a person, other than a processor, wholesaler or retailer, who purchases the particular goods being priced and resells them after repackaging.

Example: Smith buys maraschino cherries in barrels and without further processing packs them in consumer-size bottles for resale to wholesalers. Smith is a "repacker" as to the goods which he handles in this way.

Sec. 1.5

SEC. 1.5 *Meaning of "primary distributor".* "Primary distributor" means a distributor, other than a wholesaler or retailer, who purchases all he sells (for his own account) of the kind and brand of product being priced and who customarily makes at least 50% of his purchases from the processor in carload quantities delivered for storage into a warehouse not owned or controlled by any of his customers, for resale by him in less-than-carload quantities.

In this section, "carload quantity" means any quantity of the kind of product being priced which equals or exceeds the carload minimum weight specified for the product in Consolidated Freight Classification No. 16, and amendments, issued by Agents Greenly (I. C. C.—O. C. No. 60), Dulaney (I. C. C. No. 92), Pyfe (I. C. C. No. 29), and Raasch (I. C. C. No. 566).

Example: The minimum carload quantity of canned grapefruit juice is 36,000 pounds (see Consolidated Freight Classification No. 16, p. 266, Item 18530). This is the minimum carload quantity even though lesser quantities sometimes take a carload rate.

Sec. 1.6

SEC. 1.6 *Meaning of "wholesaler" and "retailer".*

NOTE: These definitions of "wholesaler" and "retailer" are derived from Maximum Price Regulations Nos. 421,[1] 422,[2] and 423,[3] the regulations which apply generally to sales of food products at wholesale and retail. At these levels of distribution, unlike those covered by this regulation and its supplements, sellers are classified on the basis of their overall food operations, and not according to the way they handle any particular product.

"Wholesaler" means a person the larger volume of whose food business is the purchase and resale of food products, without materially changing their form, for distribution out of warehouses to independent retail stores, or to commercial, industrial or institutional users.

"Retailer" means a person the larger volume of whose food business is the purchase and resale of food products, without materially changing their form, to ultimate consumers other than commercial, industrial and institutional users.

Sec. 1.7

SEC. 1.7 *Meaning of "ultimate consumer".* "Ultimate consumer" means a person who buys the kind and brand of product being priced for direct consumption. The term includes commercial, industrial and institutional users.

Sec. 1.8

SEC. 1.8 *Meaning of "item."* "Item" means a kind, variety, grade, brand, style of pack, container type and size of product.

Sec. 1.9

SEC. 1.9 *Meaning of "container type".* "Container type" refers to the composition or style of the container used (a separate price must be figured for each container type).

Examples: Tin, glass and paper containers are all different container types. Likewise, a glass container of one design is a different container type from a glass container of a substantially different design.

Sec. 1.10

SEC. 1.10 *Meaning of "sale".* "Sale" includes sales, dispositions, exchanges, leases and other transfers, and contracts and offers to do any of those things. The terms "sell", "seller", "buy", "buyer", "purchase" and "purchaser" shall be construed accordingly.

Sec. 1.11

SEC. 1.11 *Meaning of "price".* "Price" means the consideration requested or received in connection with the sale of a commodity or the supplying of a service.

Sec. 1.12

SEC. 1.12 *Meaning of "net delivered cost".* "Net delivered cost" means the lawful amount the seller pays for the item (in a purchase which is customary, for him, in quantity, type of supplier, receiving point and means of transportation), less all discounts allowed him, except the discount for prompt payment. However, except in the case of raw agricultural commodities, the expense of local trucking or unloading may not be included in figuring "net delivered cost".

Sec. 1.13

SEC. 1.13 *Meaning of "delivered to the customary receiving point".* "Delivered to the customary receiving point" means delivered to the place where the particular buyer has customarily received the product. In any case where the buyer has no customary receiving point, "delivered to the customary receiving point" means delivered to that point where it is customary in the industry to receive the product. (Maximum prices named at the customary receiving point include all transportation to that point. Any amount the buyer himself pays to get the goods to that point must be subtracted from the maximum price named. Any amount the seller pays to move the goods beyond that point may be added to the maximum price.)

Sec. 1.14

SEC. 1.14 *Meaning of "records".* "Records" means written evidences of transactions and includes books of account, sales lists, sales slips, orders, vouchers, contracts, receipts, invoices, bills of lading, and other papers and documents.

ARTICLE II—PRICING PROVISIONS

Sec. 2.1

SECTION 2.1 *Processors who have two seasonal packs.* This section applies only to processors.

Any processor who has two seasonal packs of a food product during the calendar year may, if he wishes, figure maximum prices for it as if each pack were a separate commodity. If the maximum prices so figured for the two packs are different, the processor shall plainly indicate on the invoice in each case, and on each consumer package, whether the product is the "spring pack" or the "fall pack."

Sec. 2.2

SEC. 2.2 *Maximum prices for products in new container types or sizes.* This section applies to processors and repackers.

The maximum price per unit for any item which is packed in a new container type or size for which no maximum price is otherwise provided and which meets the requirements of paragraph (a), below, shall be figured under the following pricing method.

"New container type or size", in the case of products for which maximum prices are established on the basis of sales which the seller made during a base period named in the applicable supplement, means a container type or size which the seller did not sell during that period. In the case of products for which dollars-and-cents maximum prices are named, it means a container type or size for which no maximum price is named.

For each such item, the seller shall:

(a) *Determine the base container.* If the seller has sold the same product (that is, the same kind, variety, grade, brand, and style of pack) but only in other container types or sizes, he shall first determine the most similar container type for which he is able to figure a maximum price for that product (even though he no longer sells that container type). From that container type he shall choose the nearest size which is 50% or less larger than the new size, or if there is no such size, 50% or less smaller (even though he no longer sells those sizes). This will be the base container. If there

[1] 8 F.R. 9388, 10569, 10987, 13293, 15250, 15607, 17367, 17368; 9 F.R. 2502.

[2] 8 F.R. 9395, 10569, 10987, 13443, 13611, 13294, 15251, 14853, 15586, 15607, 17369, 17370; 9 F.R. 95, 3510, 3648.

[3] 8 F.R. 9407, 10570, 10988, 13443, 13671, 13294, 14354, 15587, 15608, 16091, 17371; 9 F.R. 95, 3510, 3648.

is no such smaller size, he shall go to the next most similar container type and proceed in the same manner to determine the base container. However, no container type and size which has been priced under this section shall be used as a base container.

NOTE: In most cases "the most similar container type" will be merely the container type which the seller is adding to or replacing, like the tin which he may be replacing with glass. Where there has been only a size change, "the most similar container type" will, of course, be the same container type. This is also true in the reverse situation; where there has been a change only in container type, the "nearest size" will be the same size.

(b) *Find the base price.* The seller shall take as the "base price" his maximum price under the applicable supplement for the product when packed in the base container. However, if this maximum price is a price delivered to the purchaser or to any point other than the seller's shipping point, the seller shall first convert it to a base price f. o. b. shipping point by deducting whatever transportation charges were included in it.

(c) *Deduct the container cost.* Taking his base price f. o. b. shipping point, the seller shall then subtract the direct cost of the base container. "Direct cost of the container" means the net cost, at the seller's plant, of the container, cap, label, and proportionate part of the outgoing shipping carton, but it does not include cost of filling, closing, labeling or packing.

(d) *Adjust for any difference in contents.* The figure obtained by this deduction shall then be adjusted, in the case of a size change, by dividing it by the number of units in the base container and multiplying the result by the number of the same units in the new container.

(e) *Add the new container cost to get the price f. o. b. shipping point.* Next, the seller shall add to the adjusted figure the "direct cost" of the container in the new type and size. If his maximum price for the commodity in the base container is an f. o. b. shipping point price, the resulting figure is the seller's maximum price f. o. b. shipping point.

(f) *Convert to a maximum delivered price, if the maximum price for the base container is on a delivered basis.* If the seller's maximum price for the product in the base container is a delivered price, he shall figure transportation charges to be added as follows: The seller shall take the transportation charges which he first deducted to get his base price and adjust them in exact proportion to the difference in shipping weight. If for any reason the product in the new container will move under a different freight tariff classification, the seller shall figure his transportation charges (by the same means of transportation and to the same destination) on the basis of the new shipping weight, but at the rate in effect for that freight tariff classification on March 17, 1942. Changes in tariff rates or transportation taxes made since March 17, 1942, shall not be taken into account. (Similar principles shall apply where shipping volume is the measure of the transportation charge.) The seller shall then add these transportation charges to his f. o. b. shipping point price for the commodity in the new container. The resulting figure is the processor's or repacker's maximum delivered price.

Examples: Case 1. *The maximum price f. o. b. factory if the base container is the same in size as the new container but different in type.* Assume the base container is a 16 oz. tin and the new container is a 16 oz. glass.

Maximum price per doz. f. o. b. factory in base container ("base price")	$0.55
Subtract "direct cost" of base container	−.20
	.35
Add "direct cost" of new container	+.34
New maximum price (f. o. b. factory)	$0.69

Case 2. *The maximum price f. o. b. factory if the base container is different in size from the new container and either the same or different in type.* Assume the base container is a 10½ oz. tin and the new container is an 8 oz. tin or glass.

Maximum price per doz. f. o. b. factory in base container ("base price")	$1.20
Subtract "direct cost" of base container	−.15
	1.05
Adjust to new container:	
Divide by number of ounces of commodity in base container	$1.05 ÷ 10½
	.10
Multiply by number of ounces of commodity in new container	×8
	.80
Add "direct cost" of new container (glass)	.26
New maximum price (f. o. b. factory)	$1.06

Case 3. *The maximum delivered price if the base container is the same in size as the new container but different in type.* Assume the base container is a 16 oz. tin and the new container is a 16 oz. glass.

Maximum delivered price per doz. in base container (figured carload)	$0.60
Subtract transportation charges	−.05
Price f. o. b. factory ("base price")	.55
Subtract "direct cost" of container	−.20
	.35
Add "direct cost" of new container	+.34
Add new transportation charges:	
$0.05 (old transportation charges) × 40 lb. (new shipping weight/case) ÷ 34 lb. (old shipping weight/case)	= .056
New maximum delivered price	$0.75

Case 4. *Same except that the new container type puts the commodity in a different freight tariff classification.* Assume the base container is a 16 oz. tin and the new container is a 16 oz. glass.

Maximum delivered price per doz. in base container (figured less than carload)	$0.60
Subtract transportation charges	−.05
Price f. o. b. factory ("base price")	.55
Subtract "direct cost" of container	−.20
	.35
Add "direct cost" of new container	+.34
Add new transportation charges:	
40 lb. (new shipping weight) ÷ 100 × $0.185 (rate per cwt. under new classification)	= .074
New maximum delivered price (doz.)	$0.76

Sec. 2.3

SEC. 2.3 *Adjustment of dollars-and-cents maximum prices for processors who perform the wholesale or retail function.* This section applies only to processors. Moreover, the adjustments provided by it apply only to dollars-and-cents maximum prices and not to maximum prices figured on a formula basis.

(a) *Sales by processors from branch warehouses.* Any processor who sells the item being priced, from a branch warehouse owned or controlled by him, to retailers or to commercial, industrial or institutional users, shall figure his maximum prices for these sales, f. o. b. branch warehouse, as follows: He shall add to his dollars-and-cents maximum price, f. o. b. factory, the freight, if any, incurred from factory to branch warehouse, and multiply the resulting figure by the markup named in Maximum Price Regulation No. 421 for cash-and-carry wholesalers or for service wholesalers, depending on whether delivery is made in the particular sale to the buyer's place of business. These markups shall be used only when the particular goods have been warehoused at the branch warehouse and are being sold in less-than-carload quantities. (A processor who has more than one factory or branch warehouse may, if he wishes, figure freight on a weighted average basis from factory to branch warehouse, in the manner provided in section 2.8 of Food Products Regulation No. 1.)

"Branch warehouse" means a plant or warehouse (1) which is physically apart from the seller's factory and is separately operated for the principal purpose of selling (in contrast to storing) food products manufactured by him, (2) from which he sells a larger volume of the product to independent retail stores or commercial, industrial or institutional users than he sells to other classes of purchasers, and (3) at which he maintains a sales organization separate from the factory sales organization.

(b) *Sales by processors to ultimate consumers.* Processors who sell the items they manufacture to ultimate consumers, other than commercial, industrial and institutional users, are normally persons whose general business is selling at retail items manufactured by others. Retailers are covered by Maximum Price Regulations Nos. 422 and 423, which also provide special pricing methods for items that a retailer may happen to manufacture himself (see section 25 of MPR 422). Manufacturing retailers, therefore, shall figure their maximum prices under those regulations.

Sec. 2.4

SEC. 2.4 *Elective pricing method for processors.* This section applies only to processors.

If the processor cannot otherwise determine his maximum price for an item under the pricing methods of the applicable supplement, he may, if he wishes, figure his maximum price under the pric-

ing method of this section. However, if any ingredient is a raw agricultural commodity, he may use this pricing method only if each of the raw agricultural commodities actually used in the item is either subject to maximum prices, or is covered by announced prices (including support prices) recommended by the Department of Agriculture for payment to growers, or is covered by the Commodity Credit Corporation's purchase and resale program.

(a) *Pricing method for sales to purchasers other than government procurement agencies.* Under this section, the processor's maximum price per dozen or other unit for sales to purchasers other than government procurement agencies shall be figured as follows. He shall:

(1) *Figure the "direct cost" of the item.* The processor's "direct cost" per dozen or other unit of the item shall be figured by adding together the following:

(i) His actual cost per unit of all ingredients (other than raw agricultural commodities) and of packaging materials, for which maximum prices have been established, figured at no more than the current maximum prices applying to the class of purchasers to which he belongs;

(ii) His actual cost per unit of all other ingredients (other than raw agricultural commodities) and of packaging materials, for which no maximum prices have been established, figured at no more than their current market prices;

(iii) His actual cost per unit of all raw agricultural ingredients included in the Commodity Credit Corporation's purchase and resale program, figured at no more than the Commodity Credit Corporation's resale price for the area in which his factory is located;

(iv) His actual cost per unit of all other raw agricultural ingredients, for which maximum prices have been established, figured at no more than the current maximum prices applying to the class of purchasers to which he belongs;

(v) His actual cost per unit of all other raw agricultural ingredients, for which no maximum prices have been established but for which the Department of Agriculture has announced prices recommended for payment to growers, figured at no more than these prices;

(vi) His current direct labor cost per unit; and

(vii) Transportation charges per unit by the usual mode of transportation from his customary supply point to his customary receiving point, if the cost factors used in subdivisions (i), (ii), (iii), (iv) and (v), above, are not delivered costs and if these charges are customarily incurred.

(2) *Multiply by the "markup percentage."* The processor shall multiply his "direct cost" per dozen or other unit of the item by a "markup percentage," figured by dividing:

(i) The current maximum price per unit for sales of the most closely comparable commodity then being produced by him, to purchasers other than government procurement agencies, by

(ii) The current cost per unit of ingredients, packaging materials and direct labor of that commodity, figured in the same manner as he figures his "direct cost" under subparagraph (1), above, for the item being priced.

The resulting figure is the processor's unadjusted price for sales of the item to purchasers other than government procurement agencies.

(3) *Adjust for any applicable subsidy payment.* The processor shall finally adjust the maximum price by deducting any direct subsidy payment, payable per unit of the finished product, the amount of which has previously been announced by the Commodity Credit Corporation or other agency responsible for the administration of the subsidy and which is applicable to the particular goods being sold.

(b) *Meaning of "most closely comparable commodity."* As used in this section, "most closely comparable commodity" means a food product, covered by the same supplement, (1) whose maximum price does not exceed the percentage of its "direct cost" named in the applicable supplement; (2) whose current "direct cost" is closest to but not less than two-thirds of the "direct cost" of the item being priced; and (3) for which the methods employed in its sale and merchandising are similar to those which will be used in the sale and merchandising of the item being priced. As between two or more such commodities having the same "direct cost", the one whose maximum price represents the smallest percentage of its own "direct cost" shall be used.

(c) *Meaning of "current."* As used in this section, "current" means at the time of figuring the new maximum price.

(d) *Meaning of "actual cost per unit of all other raw agricultural ingredients."* "Actual cost per unit of all other raw agricultural ingredients" means net cost per dozen or other unit after the deduction of any direct subsidy payment, payable per unit of ingredients, the amount of which has previously been announced by the Commodity Credit Corporation or other agency responsible for the administration of the subsidy, and which is applicable to the ingredients used in the particular goods being sold.

(e) *Direct labor cost.* In deciding whether items of labor cost are to be treated as direct cost in figuring the price or are to be treated as overhead, the processor shall follow his customary practice. Thus, if a processor has treated cleaning labor as an item of overhead with respect to the comparable commodity used in determining the markup percentage, he shall continue to treat it in this way when figuring the maximum price.

(f) *Other cost factors.* The processor shall employ no cost factors, direct or indirect, in addition to those entering into the cost of the comparable commodity used in determining the markup percentage and he shall make no changes in the method of application of those factors which would result in a higher price.

(g) *Examples illustrating the method of selecting the "most closely comparable commodity".*

Example 1: Pricing of a new item of pancake mix. The processor is pricing Commodity A, for which the direct cost is $1.48, as itemized below. He also produces Commodities B and C, listed below, for which he has established maximum prices, under the applicable supplement, for sales to wholesalers. The maximum markup percentage named in the supplement is 165%. The sales unit is twenty-four 20-ounce packages, and sales of the new item are to be made to wholesalers only. All maximum prices are on an f. o. b. shipping point basis.

	Commodity A (being priced)	Commodity B	Commodity C
Ingredients	$1.13	$1.26	$0.97
Packaging materials	.24	.24	.21
Direct labor	.11	.13	.13
Total direct cost	1.48	1.63	1.31
Maximum price		2.53	2.16
Markup percentage		155%	165%

The maximum price of neither Commodity B nor Commodity C exceeds 165% of direct cost; the direct cost of each is not less than two-thirds of Commodity A; and both are sold to wholesalers. However, the direct cost of Commodity B is closer than that of Commodity C to the direct cost of Commodity A. Hence, Commodity B must be used. Application of its markup percentage of 155% ($2.53÷1.63) to the $1.48 direct cost of the new item results in a maximum price of $2.30 per twenty-four 20-ounce packages of the new pancake mix, f. o. b. shipping point, for sales to wholesalers.

Example 2: Pricing of a new item of blackberry preserves, made from fresh blackberries. In 1944 the Department of Agriculture announced that 12 cents per pound was recommended to be a proper payment to growers for fresh blackberries. Hence, ingredient cost for fresh blackberries may not exceed that figure. The preserver packs the additional commodities listed below, for which he has established maximum prices under the same applicable supplement, for sales to wholesalers. The maximum markup percentage named in the supplement is 150%. The sales unit is one dozen 1-pound jars, and sales of the new item are to be made to wholesalers only. All maximum prices are on an f. o. b. factory basis.

	Blackberry preserves (commodity being priced)	Apple jelly, Commodity A	Apricot preserves, Commodity B	Peach preserves, Commodity C	Boysenberry preserves, Commodity D	Loganberry preserves, Commodity E
Ingredients	$2.20	$0.85	$1.60	$1.80	$2.05	$2.10
Packaging materials	.30	.30	.30	.30	.30	.30
Direct labor	.20	.15	.15	.15	.25	.30
Total direct cost	2.70	1.30	2.05	2.25	2.60	2.70
Maximum price (to wholesalers)		1.65	3.20	3.60	3.38	3.51
Markup percentage		127%	156%	160%	130%	130%

The preserver also packs grape jelly, which he sells to retailers only. He may not use this commodity, regardless of other circumstances, since the methods employed in its sale and merchandising are not similar to those which will be used with respect to the new commodity.

Commodity A cannot be used because its direct cost is less than two-thirds of the direct cost of the new item.

Commodity B cannot be used because its maximum price exceeds 150% of its direct cost ($3.20÷$2.05=156%).

Commodity C cannot be used because Commodities D and E have a direct cost closer than that of Commodity C to the direct cost of the new item.

Commodity E must be used instead of Commodity D, although each has the same direct cost, because the maximum price of Commodity E represents a smaller percentage of its direct cost than the percentage of direct cost represented by the maximum price of Commodity D. Thus, since the other necessary conditions are present, loganberry preserves must be used as the comparable commodity. Application of its markup percentage of 125% ($3.25÷$2.60) to the $2.70 direct cost of the new item results in a maximum price of $3.375 per dozen one-pound jars of blackberry preserves, f. o. b. factory, for sales to wholesalers.

(h) *Refiguring the maximum price.* The processor shall refigure his maximum price under paragraph (a), for sales to purchasers other than government procurement agencies, in any case where the amount of any direct subsidy payment, applicable to the particular goods being sold, is announced by the Commodity Credit Corporation, or other agency responsible for the administration of the subsidy, after he has established his price. The refigured maximum price shall apply to sales of such goods made after the date of the announcement.

(i) *Pricing method for sales to government procurement agencies.* The processor's maximum price for sales of the item to government procurement agencies shall be determined as provided in section 2.12 of Food Products Regulation No. 1, which for this purpose shall be considered part of this section. However, if any other pricing method is provided in the applicable supplement for sales of the item to government procurement agencies, that pricing method shall be used.

(j) *Discounts and allowances.* The maximum price figured under this section shall be subject to discounts, transportation and other allowances and price differentials no less favorable than those given with respect to the comparable commodity used in determining the "markup percentage." However, the processor is not required to give a discount for prompt payment in the case of sales to government procurement agencies.

(k) *Reporting and approval of prices.* Before delivering the item to any purchaser, the processor shall file with the Office of Price Administration, Washington, D. C., a report setting forth the following:

(1) A description of the item for which he has figured a maximum price under this section and the reasons why the price cannot be otherwise determined by him;

(2) The maximum price so figured, together with a true copy of the calculations showing his determination of the price, and, for the purposes of comparison, itemized cost breakdowns of both the item being priced and the comparable commodity used in determining the markup percentage, showing separately, according to his own system of accounts or regularly prepared operating statements, all major component cost factors (e. g., direct costs, such as raw materials, packaging materials and direct labor; indirect costs, such as indirect labor, factory overhead and selling, advertising and administrative cost, together with an explanation showing the method of allocation of the indirect cost factors; and freight if sold on a delivered basis) indicating whether each cost item is an actual or estimated cost;

(3) The method of distribution to be employed by the processor in marketing the item (i. e., whether it is to be sold to wholesalers, retailers, ultimate consumers or other classes of purchasers);

(4) A list of his customary discounts, transportation and other allowances and price differentials; and

(5) The volume of the item which he has on hand and which he expects to produce during the following twelve months.

Upon receipt of the report, the Office of Price Administration will either approve the maximum price or disapprove it and authorize a maximum price. The maximum price approved or authorized will be one which bears a proper relationship to those for comparable commodities and sellers.

After filing the report, the processor may deliver the item, but he may not receive payment for it until a maximum price has been approved or authorized.

Where any cost factor set forth in the report is an estimated amount, the processor shall file with the Office of Price Administration, Washington, D. C., not earlier than three months nor later than six months after a maximum price has been approved or authorized, a statement showing the actual cost of that factor in his production of the item since the maximum price was approved or authorized.

Whenever a processor refigures a maximum price under paragraph (h), above, he shall file with the Office of Price Administration, Washington, D. C., within two weeks after the date of the announcement of the direct subsidy payment, a report stating his new maximum price and the amount of the subsidy.

Any maximum price established under this section shall be subject to revision at any time by the Office of Price Administration.

Sec. 2.5

Sec. 2.5 *Individual authorization of maximum prices.* This section applies to processors and repackers.

If the processor or repacker cannot otherwise determine his maximum price for an item under the pricing methods of the applicable supplement and he cannot or elects not to price under section 2.4 of Food Products Regulation No. 1, before delivering the item to any purchaser he shall apply to the Office of Price Administration, Washington, D. C., for a maximum price. His application shall set forth:

(a) A description in detail of the item for which a maximum price is sought, including its grade and brand name (if any) to be used, the number of packages in each shipping case, and a statement of the facts which make it different from the most similar item for which he has determined a maximum price, identifying the similar item and stating its maximum price;

(b) An itemized current cost breakdown of the item to be priced, showing separately, according to his own system of accounts or regularly prepared operating statements, all major component cost factors (e. g., direct costs, such as raw materials, packaging materials and direct labor; indirect costs, such as indirect labor, factory overhead and selling, advertising and administrative cost, together with an explanation showing the method of allocation of the indirect cost factors; and freight if sold on a delivered basis) indicating whether each cost item is an actual or an estimated cost, and the identical current cost breakdown of the most closely comparable food product which contributes substantially to his total volume of business;

(c) The proposed maximum price for the item, including a statement showing the necessity for that price, any discounts or allowances which should be made applicable to the proposed price, and (for comparison) the maximum price for the second product included in paragraph (b) of this section, including a list of his customary discounts, transportation and other allowances and price differentials;

(d) The method of distribution to be employed by the seller in marketing the item (i. e., whether it is to be sold to wholesalers, retailers, consumers or other classes of purchasers); and

(e) The volume of the item which he has on hand and which he expects to produce during the following twelve months.

Upon receipt of the application, the Office of Price Administration will authorize a maximum price, or a method of determining a maximum price, for the applicant or for the sellers of the item generally, including purchasers for resale or for a class of such resellers. The maximum price authorized will be one which bears a proper relationship to those for comparable commodities and sellers. Separate maximum prices will be authorized for sales to government procurement agencies.

After filing the application, the seller may deliver the item, but he may not receive payment for it until a maximum price is authorized.

Where any cost factor set forth in the application is an estimated amount, the processor shall file with the Office of Price Administration, Washington, D. C., not earlier than three months nor later than six months after a maximum price has been authorized, a statement showing the actual cost of that factor in his production of the item since the maximum price was authorized.

If the seller fails to apply for a maximum price under this section, when required to do so, the Office of Price Administration may authorize a maximum price for his sales of the item bearing a proper relationship to those for comparable commodities and sellers. This will not relieve the seller of his obligation to comply with this section or with any other provision of the applicable supplement, nor will it relieve him of any penalty for failure to do so.

Any maximum price established under this section shall be subject to revision at any time by the Office of Price Administration.

Sec. 2.6

SEC. 2.6 *When the seller must figure a delivered price.* When this section applies to a supplement, it applies to all sellers covered by the supplement. However, it applies only to maximum prices based on sales which the seller made during a base period named in the supplement.

Any seller who regularly sold a purchaser the item being priced on a delivered basis during the base period named in the applicable supplement shall figure a maximum delivered price by adding to the maximum price for the item, figured f. o. b. shipping point, the amount of the transportation charge, per unit of that item, which he added to his f. o. b. shipping point price during that period (but only before March 18, 1942). The resulting price is the seller's maximum delivered price to that purchaser.

The seller, of course, is free to sell his goods on an f. o. b. shipping point basis. However, in that event, the f. o. b. price charged plus the actual transportation charges incurred by the buyer shall not exceed the seller's maximum price figured on a delivered basis.

Sec. 2.7

SEC. 2.7 *Uniform prices where the processor or repacker has more than one factory.* This section applies to processors and repackers.

Any processor or repacker who processes or repacks the item being priced at more than one factory and whose maximum prices for the item vary by factory may, if he wishes, establish a uniform maximum price for the item for any group of factories by figuring a weighted average of their separate maximum prices.

For any two or more factories selected by the seller, this "weighted average maximum price" shall be figured by him as follows: He shall (a) determine the total estimated receipts which would have been obtained if his production of the item at those factories during the one-year period immediately preceding the date of calculation had been sold at the separate maximum prices which are in effect under the applicable supplement on the date of calculation, and (b) divide that figure by the total number of units of the item (like pounds, dozens, etc.) included in that production.

The seller shall refigure his weighted average maximum price at the end of each subsequent three-months' period on the basis of sales made during the one-year period immediately preceding the date of recalculation.

Sec. 2.8

SEC. 2.8 *Uniform delivered prices where the seller has customarily been selling on an f. o. b. shipping point basis.* When this section applies to a supplement, it applies to all sellers covered by the supplement. However, it applies only to maximum prices based on sales which the seller made during a base period named in the supplement.

A seller whose maximum price for an item is on an f. o. b. shipping point basis may, if he wishes, establish a uniform maximum delivered price for the item, by zone or area, by adding to his f. o. b. shipping point price his weighted average transportation charge from shipping point to purchasers' receiving points.

For any zone or area, this "weighted average transportation charge" shall be figured by him as follows: He shall (a) determine the total estimated transportation charges which would have been incurred if the shipments of the item which he made during the one-year period immediately preceding the date of calculation, to purchasers in that zone or area, had been at rates in effect on that date, and (b) divide that figure by the total number of pounds or other units of the item included in those shipments. (Where more than one means of transportation is used, averages may be taken separately for each.)

The seller shall refigure his weighted average transportation charge at the end of each three-months' period on the basis of shipments made during the one-year period immediately preceding the date of recalculation and at rates in effect on that date.

Sec. 2.9

SEC. 2.9 *Maximum prices for sales by primary distributors.* There are two pricing methods for primary distributors.

(a) *Pricing Method No. 1.* A primary distributor may use the following pricing method only if he sold the kind and variety of product being priced (as a primary distributor) before April 28, 1942, and he may use this pricing method only when he is selling, in less-than-carload quantities, merchandise which he has actually warehoused. (In normal situations the pricing method will give him the same dollars-and-cents margin that he previously had.)

If the processor's maximum price for the item under the applicable supplement is greater than the processor's maximum price under the maximum price regulation previously applicable to the processor, the primary distributor shall add the difference to the maximum price which he had immediately prior to the effective date of the applicable supplement. If the processor's maximum price for it under the applicable supplement is less than the processor's maximum price under the maximum price regulation previously applicable, the primary distributor shall subtract the difference from the maximum price which he had immediately prior to the effective date of the applicable supplement. However, in no event may the primary distributor's maximum price be greater than his net delivered cost (based upon purchases directly from the processor) plus the markup named in the applicable supplement. The resulting figure is the primary distributor's maximum price for the item when warehoused by him and sold in less-than-carload quantities.

If the primary distributor sold the kind and variety of product being priced, before April 28, 1942, but did not sell the particular grade, brand, style of pack, container type or size being priced before the effective date of the applicable supplement, his maximum price for the new item shall be his net delivered cost (based on his first purchase of the item after that date direct from the processor) multiplied by a markup factor. This markup factor shall be figured by dividing his maximum price (as figured under this section) for the most closely comparable item of that kind and variety of product already handled by him by the current net delivered cost to him of that item. He may apply this markup factor only when he is selling, in less-than-carload quantities, goods which he has actually warehoused.

(b) *Pricing Method No. 2.* For all items, and for sales of such items, which are not covered by Pricing Method No. 1, the primary distributor's maximum price, f. o. b. shipping point, shall be the maximum price of his supplier, f. o. b. shipping point, plus incoming freight paid by him.

Examples: The processor's ceiling price for grapefruit juice under MPR 509 and under the applicable supplement are the same. Therefore, the primary distributor's maximum price remains the same under the applicable supplement as it was under MPR 509.

The processor's ceiling price under MPR 306 for asparagus (all green spears) in No. 3 size cans was $3.55 per dozen for colossal size, A-fancy grade. Under the applicable supplement it is now $3.85 per dozen. The primary distributor therefore adds the increase of 30 cents to his own ceiling price under MPR 306, provided that the maximum price so determined does not exceed his net delivered cost plus the markup named in the supplement.

The primary distributor handled packed grapefruit juice as a primary distributor before April 28, 1942. He added packed orange juice to his line in October 1942. Although he may use Pricing Method No. 1 for packed grapefruit juice, he must use Pricing Method No. 2 for packed orange juice because he did not sell it as a primary distributor before April 28, 1942.

Before April 28, 1942, the primary distributor handled "X" brand fancy sweetened grapefruit juice in No. 2 size cans, for which his maximum price under MPR 509 and the applicable supplement is $1.24 per dozen and his current net delivered cost is $1.15 per dozen. He now adds to his line "X" brand fancy sweetened grapefruit juice in No. 3 cyl. cans, for which the net delivered cost of his first purchase from the processor is $2.60 per dozen. Because the No. 2 can size is the most closely comparable item of the same kind and variety, he divides $1.24 by $1.15 and obtains a markup factor of 108%. Application of 108% to $2.60 results in a figure of $2.81, which is his maximum price for the new item when he sells, in less-than-carload quantities, goods which he has actually warehoused.

Sec. 2.10

SEC. 2.10 *Maximum prices for sales by distributors who are not primary distributors, wholesalers or retailers.* The maximum price, f. o. b. shipping point, of a distributor who is not a primary distributor, wholesaler, or retailer shall be the maximum price of his supplier, f. o. b. shipping point, plus incoming freight paid by him.

Sec. 2.11

SEC. 2.11 *Payment of brokers.* When this section applies to a supplement, it applies to all sellers covered by the supplement.

In accordance with trade custom, every broker shall be considered as the agent of the seller and not the agent of the buyer. In each case, the amount paid by the buyer to the seller plus any amount paid by the buyer to the broker shall not exceed the seller's maximum price, including allowable transportation actually paid by the seller or by the broker. In other words, the seller may not collect from the buyer any more than the maximum price, including allowable transportation so paid, less any amount which the buyer pays the broker.

The term "broker" includes a "finder."

Sec. 2.12

SEC. 2.12 *Maximum prices for sales to government procurement agencies in certain cases.* When this section applies to a supplement, it applies to all sellers covered by the supplement. However, it applies only where no maximum price is specifically provided by the applicable supplement for sales of an item to government procurement agencies.

(a) The seller's maximum price, f. o. b. shipping point, for sales to government procurement agencies shall be 96% of his maximum price, f. o. b. shipping point, to purchasers other than government procurement agencies (for processors and repackers, "f. o. b. shipping point" means "f. o. b. factory"), after that maximum price has been adjusted, where necessary, as follows:

(1) If the seller is a processor and if any raw agricultural ingredient used in the commodity is covered by the Commodity Credit Corporation's purchase and resale program, the processor shall first increase the maximum price per dozen or other unit, f. o. b. factory, by the difference, per dozen or other unit, between the Commodity Credit Corporation's purchase price for the area in which he received delivery of the raw materials and its resale price for the area in which his factory is located.

(2) If the seller is a processor, he shall increase the maximum price per dozen or other unit, f. o. b. factory, by the amount of any direct subsidy payment the amount of which has previously been announced by the Commodity Credit Corporation or other agency responsible for the administration of the subsidy and which is applicable to the particular goods being sold or their ingredients.

(b) If a processor or repacker has no maximum price for sales f. o. b. factory to persons other than government procurement agencies, he shall apply to the Office of Price Administration, Washington, D. C., for a maximum price for sales to government procurement agencies.

Sec. 2.13

SEC. 2.13 *Special packing expenses which may be reflected in maximum prices for sales to government procurement agencies.*

NOTES: This section is derived from, and for the purposes of the applicable supplement supersedes, Supplementary Order No. 34,[1] issued by the Office of Price Administration.

When this section applies to a supplement, it applies to all sellers covered by the supplement.

(a) *Conditions under which special packing expenses may be reflected in maximum prices.* Special packing expenses are a basis for increasing maximum prices for sales to government procurement agencies only if all the following conditions are satisfied:

(1) The buyer must specifically require that the commodity be packed, or unpacked and repacked, to the buyer's specifications.

(2) The seller must show separately in his contract of sale, or on the invoice furnished to the buyer, the net charge being made for the packing (and any unpacking and repacking) specified by the buyer.

(3) In addition to the records required by the applicable supplement, the seller must prepare and keep for inspection by the Office of Price Administration, for so long as the Emergency Price Control Act of 1942, as amended, remains in effect, accurate records showing the total additional cost required by the special packing (and any unpacking and repacking) specified by the buyer, and the value of materials salvaged in the process.

(b) *Maximum prices for sales which meet the conditions of paragraph (a).* For sales to a government procurement agency which meet the conditions of paragraph (a), the maximum prices of the seller and of any subcontractor under the seller's contract of sale with the government procurement agency shall be the maximum prices otherwise applicable, increased by the following amounts:

(1) If the packing specified by the buyer differs from standard packing, the difference between the total cost of packing to the specifications of the buyer and the total cost of standard packing, or

(2) If the commodity has already been packed in standard packing and if repacking to the specifications of the buyer is required, the total cost incurred in unpacking and repacking, less the reasonable value of salvaged materials, or

(3) If the commodity has initially been packed to the specifications of the buyer in accordance with subparagraph (1) and if repacking to new specifications of the buyer is required, the amount permitted by subparagraph (1) plus the total cost of unpacking and repacking less the reasonable value of salvaged materials.

(c) *Meaning of "total cost."* "Total cost" means the direct material costs, direct labor costs, factory overhead, and other expenses actually incurred in performing the operations described above. However, where these operations are performed for the seller or subcontractor by an independent contractor (not affiliated with the seller) who does not process or sell the commodity, but only packs it or prepares it for packing, the amount actually paid to the independent contractor shall be considered to be the "total cost" of such operations.

(d) *Meaning of "packing" and "standard packing."* "Packing" means the providing of wrappings, inner containers, or outer containers; the placing of commodities in such wrappings or containers; and the application of any special coverings or coatings.

"Standard packing" means that packing the cost of which was included in figuring the maximum price established by the applicable supplement, or, any other type of packing expressly referred to and expressly priced in the applicable supplement.

Sec. 2.14

SEC. 2.14 *Treatment of federal and state taxes.* When this section applies to a supplement, it applies to all sellers covered by the supplement. However, paragraph (b) applies only to maximum prices based on sales which the seller made during a base period named in the supplement.

(a) *As to the tax on transportation of property imposed by section 620 of the Revenue Act of 1942.* The tax on transportation of property imposed by section 620 of the Revenue Act of 1942 shall, for the purposes of determining the maximum price of any item, be treated as if it were an increase of 3% in the amount charged by persons engaged in the business of transporting property for hire. It shall not be treated as a tax for which a charge may be made in addition to the maximum price. (This provision is derived from, and for the purposes of the applicable supplement supersedes, Supplementary Order No. 31,[1] issued by the Office of Price Administration.)

(b) *As to taxes other than the tax on transportation of property imposed by section 620 of the Revenue Act of 1942.* Any tax incident to the sale, delivery, processing, or use of an item, imposed by any statute or ordinance (other than the tax on transportation of property imposed by section 620 of the Revenue Act of 1942), shall be treated as follows in determining the seller's maximum price for the item, and in preparing the records required by the applicable supplement:

(1) *As to a tax in effect during the base period.* (i) If the seller paid the tax or if the tax was paid by any prior seller, irrespective of whether the amount was separately stated and collected from the seller, but during the base period named in the applicable supplement he did not customarily state and collect, separately from the purchase price, the amount of tax paid by him (or tax reimbursement collected from him by his supplier), the seller may not collect the

[1] 8 F.R. 12404, 14073.

[1] 7 F.R. 9694; 8 F.R. 1312, 8702, 9821.

amount in addition to the maximum price under the applicable supplement.

(ii) In all other cases, if at the time the seller determines his maximum price the statute or ordinance imposing the tax does not prohibit him from stating and collecting the tax separately from the purchase price, and he does state it separately, he may collect, in addition to the maximum price, the amount of the tax actually paid by him (or an amount equal to the amount of tax paid by any prior seller and separately stated and collected from the seller by his supplier). In this case the seller shall not include the amount in determining his maximum price under the applicable supplement.

(2) *As to a tax or tax increase which becomes effective after the base period.* If the statute or ordinance imposing a tax or tax increase effective after the base period named in the applicable supplement does not prohibit the seller from stating and collecting the tax or increase separately from the purchase price, and he does separately state it, he may collect, in addition to the maximum price, the amount of the tax or increase actually paid by him (or an amount equal to the amount of tax paid by any prior seller and separately stated and collected from the seller by his supplier).

Sec. 2.15

SEC. 2.15 *Units of sale and fractions of a cent.* When this section applies to a supplement, it applies to all sellers covered by the supplement.

(a) Maximum prices shall be stated in terms of the same general units (like pounds, dozens, etc.) in which the seller has customarily quoted prices for the product, except when the applicable pricing method shows that another unit shall be used.

(b) Amounts computed in the process of figuring a maximum price (other than the maximum price itself) shall be carried to four decimal places (hundredths of a cent). For sales to government procurement agencies, the maximum price itself shall be carried to four decimal places. If any figured maximum price (other than for sales to government procurement agencies) includes a fraction of a cent, the seller shall adjust the maximum price to the nearest fractional unit of a cent (like 1¢, ½¢, etc.) in which he has customarily quoted prices for the product.

Sec. 2.16

SEC. 2.16 *Maintenance of customary discounts and allowances.* When this section applies to a supplement, it applies to all sellers covered by the supplement.

No person shall change any customary allowance, discount or other price differential to a purchaser or class of purchasers, if the change results in a higher net price to that purchaser or class. However, in the case of sales to government procurement agencies, the seller is not required to give a discount for prompt payment.

ARTICLE III—MISCELLANEOUS PROVISIONS

Sec. 3.1

SECTION 3.1 *Restrictions on sales to primary distributors.* For sales of the 1943 and 1944 production of any item, made after the effective date of the applicable supplement, no processor shall sell to primary distributors a greater percentage (by volume) than he sold to primary distributors during the one-year period ending April 28, 1942.

Sec. 3.2

SEC. 3.2 *Weights.* Where label weights are used, prices figured by weight shall be based on the weights named on the label and not on actual fill.

Sec. 3.3

SEC. 3.3 *Storage.* Storage costs incurred by the seller on goods owned by him shall not be added to his maximum prices. Storage by the seller of goods owned by the buyer may be charged for in accordance with the maximum price regulation applicable to such services.

Sec. 3.4

SEC. 3.4 *Export sales.* The maximum price at which a person may export any item covered by the applicable supplement shall be determined in accordance with the Second Revised Maximum Export Price Regulation,* and amendments.

Sec. 3.5

SEC. 3.5 *Notification of new maximum price.* With the first delivery of an item after the effective date of any provision changing the seller's maximum price, he shall:

(a) Supply each wholesaler and retailer who purchases from him with written notice, reading as follows:

(Insert date)

NOTICE TO WHOLESALERS AND RETAILERS

Our OPA ceiling price for (*describe item by kind, variety, grade, brand, style of pack, and container type and size*) has been changed by the Office of Price Administration. We are authorized to inform you that if you are a wholesaler or retailer pricing this item under Maximum Price Regulation No. 421, 422 or 423, you must refigure your ceiling price for this item on the first delivery of it to you from your customary type of supplier with this notification after (*insert effective date of the applicable supplement, amendment or order*). You must refigure your ceiling price following the rules in section 6 of Maximum Price Regulation No. 421, 422 or 423, whichever is applicable to you.

For a period of 60 days after determining the new maximum price for the item, and with the first shipment after the 60-day period to each person who has not made a purchase within that time, each processor or repacker shall include in each case, carton, or other receptacle containing the item, the written notice set forth above, or securely attach it to the outside. However, for sales direct to any retailer, the seller may supply the notice by attaching it to, or stating it on, the invoice covering the shipment, instead of providing it with the goods.

(b) Supply each purchaser of the item who is a distributor other than a wholesaler and retailer with written notice of the establishment of the new maximum price. The notice, which shall be attached to, or stated on, the invoice covering the first delivery to such purchaser after the effective date of the provision changing the maximum price, shall read as follows:

(Insert date)

NOTICE TO DISTRIBUTORS OTHER THAN WHOLESALERS AND RETAILERS

Our O. P. A. ceiling price for (*describe item by kind, variety, grade, brand, style of pack, and container type and size*) has been changed from $.... to $.... under the provisions of Supplement No. .... to Food Products Regulation No. 1. You are required to notify all wholesalers and retailers for whom you are the customary type of supplier purchasing the item from you after (*insert effective date of the applicable supplement, amendment or order*) of any change in your maximum price. This notice must be made in the manner prescribed in section 3.5 of Food Products Regulation No. 1.

Sec. 3.6

SEC. 3.6 *Records which must be kept.* Every person who makes sales covered by the applicable supplement shall:

(a) Make and preserve for examination by the Office of Price Administration, for so long as the Emergency Price Control Act of 1942, as amended, shall remain in effect, all records of the same kind as he has customarily kept, relating to the prices which he charged in those sales, and

(b) Preserve for examination by the Office of Price Administration, for the same period, all his existing records which were the basis of figuring his maximum prices in the manner directed by the applicable supplement, showing the method used in figuring the maximum prices.

Sec. 3.7

SEC. 3.7 *Authority of regional and district offices to audit reports.* Any Regional Administrator of the Office of Price Administration, or any District Director authorized by his Regional Administrator, may (a) approve or disapprove reports filed with his office under the reporting provisions of this regulation and its supplements, and (b) require any seller filing a report with it which does not comply with the reporting provisions to correct and re-submit his report.

Sec. 3.8

SEC. 3.8 *Sales slips and receipts.* Any seller who has customarily given a purchaser a sales slip, receipt, or similar evidence of purchase, shall continue to do so. Upon request, any seller, regardless of previous custom, shall give the purchaser a receipt showing the date, the name and address of the seller, the name and quantity of each item sold, and the price received for it.

*8 F.R. 4132, 5987, 7662, 9998, 15193.

Sec. 3.9

SEC. 3.9 *Transfers of business or stock in trade.* If the business, assets or stock in trade of a seller subject to the applicable supplement are sold or otherwise transferred on or after April 28, 1942, and the transferee carries on the business, or continues to deal in the same type of food product, in an establishment separate from any other establishment previously owned or operated by him, the maximum prices of the transferee shall be the same as those to which his transferor would have been subject if no such transfer had taken place, and his obligation to keep records sufficient to verify such prices shall be the same. The transferor shall either preserve and make available, or turn over, to the transferee all records of transactions prior to the transfer which are necessary to enable the transferee to comply with the record provisions of the applicable supplement.

Sec. 3.10

SEC. 3.10 *How a figured maximum price is established and how an established maximum price may be changed.* On and after the effective date of the applicable supplement, a price figured for any item becomes established (that is, fixed) as the seller's maximum price as soon as he has either filed the price or disclosed it to any prospective customer, whether by sale, delivery, offer, or notice of any kind, provided that the figured price is not higher than the applicable pricing method allows. A maximum price for any item may be established only once, and it may not be changed by the seller except (a) with the written permission of the District Director of the Office of Price Administration for the area in which he is located in cases where the seller has figured his maximum price lower than the applicable pricing method allows, (b) in cases where a change in this regulation or the applicable supplement changes the seller's applicable pricing method, and (c) in cases where a provision of this regulation or the applicable supplement directs the seller to refigure his price. District Directors are authorized to give this permission.

If the seller wishes to disclose a price lower than the one he figured, he may establish the higher (figured) price as his maximum price at the time of disclosure only by recording it and naming it as such, in ink on his books, before he discloses the lower price. A seller who has not figured a price for an item may deliver the item, but he may not receive payment for it until he has established a maximum price in accordance with the rules of this section.

Exception: This section does not apply to prices figured under section 2.5 of Food Products Regulation No. 1 (elective pricing method for processors).

Sec. 3.11

SEC. 3.11 *Adjustable pricing.* Any person may agree to sell at a price which can be increased up to the maximum price in effect at the time of delivery. But no person may, unless authorized by the Office of Price Administration, deliver or agree to deliver at prices to be adjusted upward in accordance with action taken by the Office of Price Administration after delivery. Such authorization may be given when a request for a change in the applicable maximum price is pending, but only if the authorization is necessary to promote distribution or production and if it will not interfere with the purposes of the Emergency Price Control Act of 1942, as amended. The authorization may be given by the Administrator or by any official of the Office of Price Administration having authority to act upon a pending request for a change in price or to give the authorization. The authorization will be given by order, except that it may be given by letter or telegram when the contemplated revision will be the granting of an individual application for adjustment.

Sec. 3.12

SEC. 3.12 *Compliance with the applicable supplement—(a) No selling or buying above maximum prices.* Regardless of any contract or obligation no person shall sell or deliver, or buy or receive in the course of trade, any item at a price higher than the maximum price established for it by the applicable supplement. However, prices lower than the maximum price may be charged and paid.

However, the prohibition of this paragraph does not apply to (1) any war procurement agency of the United States, or its contracting or paying finance officers, or (2) the government (or its agencies) of any country the defense of which the President of the United States deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to Promote the Defense of the United States." No such purchaser or person shall be subject to the liabilities otherwise imposed by this section or by the Emergency Price Control Act of 1942. "War procurement agency" includes the War Department, the Department of the Navy, the United States Maritime Commission, the Lend-Lease Section of the Procurement Division of the Treasury Department, and the following subsidiaries of the Reconstruction Finance Corporation: the Defense Plant Corporation, the Rubber Reserve Corporation, the Metals Reserve Corporation, and the Defense Supplies Corporation, or any of their agencies. (This exception is derived from, and for the purpose of the applicable supplement supersedes, Supplementary Order No. 7,[7] issued by the Office of Price Administration.)

(b) *Evasion.* Nor shall any person evade a maximum price, directly or indirectly, whether by commission, service, transportation, or other charge or discount, premium or other privilege; by tying-requirement or other trade understanding; by any change of style of pack; by a business practice relating to grading, labeling, or packaging, or in any other way.

(c) *Enforcement.* Any person violating a provision of the applicable supplement is subject to the criminal penalties, civil enforcement actions, license suspension provision, and suits for treble damages provided by the Emergency Price Control Act of 1942, as amended.

(d) *Licensing.* The provisions of Licensing Order No. 1,[8] licensing all persons who make sales under price control, are applicable to all sellers subject to the applicable supplement. A seller's license may be suspended for violations of the license or one or more applicable price schedules or regulations. A person whose license is suspended may not, during the period of suspension, make any sale for which his license has been suspended.

Sec. 3.13

SEC. 3.13 *Adjustment of maximum prices of food products under "Government contracts" or subcontracts.*

NOTE: This section is derived from, and for the purposes of the applicable supplement supersedes, Supplementary Order No. 9,[9] issued by the Office of Price Administration.

(a) The Office of Price Administration, either on its own motion or on application for adjustment in accordance with Procedural Regulation No. 6,[10] and amendments, may adjust the maximum price of any seller who has entered into or proposes to enter into a Government contract (or subcontract) for the sale of an item of a food product essential to the war program, whenever it appears that the maximum price impedes or threatens to impede its production, manufacture, or distribution. (The applicant's over-all profits will be an important consideration in determining the action to be taken.)

(b) From 5 days prior to the filing of an application for adjustment until its final disposition, contracts may be entered into or proposed and bids submitted at the price requested in the application, and deliveries may be made under such contracts. However, no amount by which the price exceeds the maximum price may be paid or received until an order granting a higher price has been issued. In each sale, contract to sell, or offer to sell, at a price requested in the application, the seller shall furnish the buyer with a statement showing the following:

(1) The maximum price for the item; and

(2) The filing of an appropriate application with the Office of Price Administration, or the intention to file it within five days.

(c) Any government agency may appear as an interested party in connection with the application.

(d) "Food product essential to the war program" means any food product purchased (1) for the ultimate use of the Army, the Navy, the Maritime Commission, or the War Shipping Administration of the United States, or the Lend-Lease Section of the Procurement Division of the Treasury Department, or (2) by the government (or its agencies) of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to Promote the Defense of the United

[7] 7 F.R. 5176.

[8] 8 F.R. 13240.

[9] 7 F.R. 5444, 9323; 8 F.R. 4510, 4785, 6175.

[10] 7 F.R. 5067, 5664; 8 F.R. 6173, 6174, 13094.

States," or (3) for use in the production or manufacture of any such food product.

"Government contract" means a contract with the United States, or an agency, or with the government (or its agencies) of any country whose defense the President deems vital to the defense of the United States under the terms of the Act named above.

"Subcontract" means a purchase order or agreement to perform all or part of the work required under, or to make or furnish any commodity needed for the performance of, another Government contract or subcontract.

Sec. 3.14

SEC. 3.14 *Applications for adjustment by sellers who have been found to have violated the Robinson-Patman Act.*

NOTE: This section is derived from, and for the purposes of the applicable supplement supersedes, Supplementary Order No. 41," issued by the Office of Price Administration.

(a) The Office of Price Administration may adjust the maximum price established for any seller in any case in which he shows:

(1) That he has been found by the Federal Trade Commission, or any court of competent jurisdiction, to have discriminated in price between different purchasers of commodities in violation of the provisions of the Robinson-Patman Act (49 Stat. 1526) or of any state statute prohibiting price discriminations; and

(2) That the elimination of the discrimination by lowering his price to the purchasers against whom he has been found to have discriminated would cause him substantial hardship; and

(3) That the elimination of the discrimination by increasing his price to the purchasers in whose favor he has been found to have discriminated is prohibited by the applicable supplement.

(b) Applications for adjustment under this provision shall be filed with the Office of Price Administration, Washington, D. C., in accordance with the provisions of Revised Procedural Regulation No. 1."

Sec. 3.15

SEC. 3.15 *Applications for adjustment and petitions for amendment based on wage or salary increases requiring approval of the National War Labor Board.* Any seller may file an application for adjustment of his maximum prices, or a petition for amendment of the applicable supplement, based on a wage or salary increase requiring the approval of the National War Labor Board before any such increase becomes effective, in accordance with Supplementary Order No. 28,[11] issued by the Office of Price Administration.

Sec. 3.16

SEC. 3.16 *Petitions for amendment.* Any person seeking a general modification of this regulation or the applicable supplement may file a petition for amendment in accordance with Revised Procedural Regulation No. 1, issued by the Office of Price Administration.

Effective date. This regulation shall become effective June 21, 1944.

Issued this 16th day of June 1944.

NOTE: All record-keeping and reporting requirements of this regulation have been approved by the Bureau of the Budget, in accordance with the Federal Reports Act of 1942.

CHESTER BOWLES,
Administrator.

[9] 8 F.R. 4782.

[10] 8 F.R. 3313, 3533, 6173, 11806.

[11] 7 F.R. 9619; 8 F.R. 7356.

STATEMENT OF THE CONSIDERATIONS INVOLVED IN THE ISSUANCE OF FOOD PRODUCTS REGULATION NO. 1

Food Products Regulation No. 1 cannot be fully understood without knowing the difficulties which it attempts to minimize.

The establishment of maximum prices for a large number of processed dry groceries involves a certain inevitable multiplicity of pricing methods because of the necessity of adapting these methods to the varying peculiarities of the commodities dealt with. This multiplicity is not enlarged by stating separate pricing methods in separate documents nor is it lessened by stating them in a single document. The hard fact is that these diversities inhere in price control and no amount of "simplification" can reduce them beyond a certain minimum.

In spite of inescapable differences of treatment, however, there are many pricing problems, situations and concepts which tend to recur as common, in greater or less degree, to large classes of products. Thus, problems of discounts and allowances, brokerage, storage, compliance, amendments, uniform delivered prices, definitions, and other matters, are found to repeat themselves in the face of substantial differences in product and differences in basic price treatment.

These facts have forced OPA into a troublesome dilemma in the writing and administration of its maximum price regulations. On the one hand, it has been tempted to write a separate price regulation for each group of food commodities requiring individual treatment. On the other hand, it has been under pressure to emphasize the recurring problems and lump otherwise divergent pricing methods into common regulations. That neither alternative is universally satisfactory has been fully demonstrated by experience. The difficulties of this position have not been lightened by frequent insistence that OPA go in both directions at once!

The piecemeal approach of early price control which expediency required has given OPA the fullest opportunity to try the former alternative. For example, after the issuance of the maximum price regulation applicable to preserves, jams and jellies, it became necessary to establish maximum prices for apple butter. Inasmuch as there were substantial differences in pricing treatment, a separate pricing method was adopted, and, under the pressure of time, it was thought simpler to issue a separate regulation than to attempt to rebuild an existing regulation. Still later, OPA established a regulation for canned applesauce, sliced apples and related apple products. Again, in the case of specialty products like pickles, potato chips, cider vinegar, macaroni products, macerated dates and apple pomace, separate regulations were written. In each case, it was found necessary to deal with a large number of recurring problems.

The difficulties which this approach produced stem not from the fact that different documents have been issued for each group of commodities, but from the fact that it was necessary to restate in each case a number of provisions intended to cover pricing and enforcement problems common to all. This led to some lack of uniformity in these provisions and in their interpretation, with consequent confusion to the public and loss of time to the staff.

Attempts have been made to minimize these disadvantages by consolidating commodities into larger, more comprehensive regulations. Thus, for example, whereas the 1942 packs of canned fruits and canned vegetables were priced in separate regulations (MPRs 185 and 152), the 1943 packs of both canned fruits and vegetables were covered in a single regulation (MPR 306). Again, in MPR 426, an attempt was made to price a large number of fresh fruits and vegetables in a single master regulation, and in MPR 445, a regulation of about 55 printed pages in length, a comprehensive plan was devised whereby the pricing of all liquor, imported and domestic, was attempted in a single, integrated document.

In the administration of such attempts to simplify and consolidate, OPA learned certain fundamental principles of organization. One of these is the fact that mere physical consolidation does not necessarily mean greater workability and simplicity of understanding. For one thing, differences in pricing methods cannot always be successfully reconciled within the compass of a single instrument without causing confusion both within and outside of OPA. For example, in some instances dollars-and-cents pricing and formula pricing require basic approaches which cannot without needless difficulty be stated in a single integrated regulation. Moreover, there is no virtue in collecting in a single document pricing methods respectively addressed to diverse groups of sellers which have nothing in common. An industry which is devoted primarily to canned fruits and

vegetables has little interest in operating under a regulation encumbered with pricing provisions on tobacco and beer. In short, one document is not always simpler than two documents. On the contrary, several are frequently better than one. Thus, it was found advisable to have three separate regulations in the field of wholesalers and retailers of dry groceries, instead of one or even two.

Food Products Regulation No. 1 is an attempt to resolve the fundamental dilemma, existing in some fields, between the desirability of consolidation and the desirability of treating different pricing problems differently.

The conflict is resolved, it is believed, by segregating, standardizing and unifying the recurring provisions and by stating them in a single autonomous pricing document. The non-recurring provisions, on the other hand, are stated separately from the recurring provisions and in turn are stated separately from each other according to their natural groupings. In this way, common provisions can be dealt with as a unit, while separate individual pricing methods are handled on an individual basis, with a minimum of confusion.

Food Products Regulation No. 1 is set up as an autonomous document separate from its supplements, which set forth the various basic pricing methods. It attempts to gather into a single document the provisions most commonly used in regulations fixing maximum prices for the sales of processed dry groceries. Having gathered together these provisions, the regulation operates in a manner exactly opposite to the way in which a supplementary order works. Instead of inserting itself in a number of specified regulations listed in the order itself (which usually requires a separate order for each provision) the regulation is able to operate comprehensively as a single document by having effect on particular commodities only to the extent that particular supplements specifically adopt its various sections. Thus, the normal order of incorporation by reference is almost exactly reversed.

This latter feature of the regulation is believed to be essential to its most efficient use. The ultimate aim has been to consolidate the largest possible number of recurring provisions with respect to the largest possible number of commodities. If no provision were included in Food Products Regulation No. 1 which did not apply to all supplements, then an attempt to consolidate a substantial number of provisions would mean that only a relatively small number of commodities could be included within the particular plan. Conversely, if an attempt were made to include a wide group of commodities, the number of 100% recurring provisions would be reduced to a point where much of the value of the consolidated regulation would be lost.

OPA constructed frequency charts showing the extent to which the various types of provisions now used tend to recur. By including in the basic regulation a number of provisions which these charts demonstrate to have large although not universal applicability, the usefulness of the plan has been greatly enlarged. This means, of course, that in some supplements not all of the sections of Food Products Regulation No. 1 will be adopted. However, this minor disadvantage creates no difficulty which is not already in many regulations of the "appendix" type, where experience has shown the frequent necessity of including a clause to the general effect that "If any special provision is contrary to or inconsistent with any general provision, the special provision shall be controlling." (See, for example, Sec. 1 of MPR 426 and Secs. 1341.551 (c) and (d) of MPR 306). On the contrary, Food Products Regulation No. 1 frankly recognizes the normal impossibility of writing any comprehensive over-all document of 100% applicability. Troublesome questions of the applicability of the general provisions of the main regulation to specific situations arising in connection with particular commodities are largely avoided because of the fact that each supplement forthrightly states which general provisions are applicable, and (by necessary implication) which are not.

To summarize, the essential plan of Food Products Regulation No. 1 and its family of supplements is built upon three basic principles:

(1) The basic regulation, as distinct from its supplements, is an autonomous document, printed and administered separately from its supplements.

(2) Each supplement, in addition to being separate from the basic regulation, is an autonomous document, printed and administered separately from other supplements to the basic regulation.

(3) The basic regulation applies to a given group of commodities only to the extent that the applicable supplement expressly adopts its provisions.

The benefits of this plan are believed to be the following.

(1) In general it will provide the most flexible possible method of simultaneously dealing with similar problems similarly and different problems differently.

(2) Together with its supplements, the basic regulation will greatly reduce the total number of provisions under which the various industries covered by the plan are now operating. Moreover, an individual seller can tailor the regulation to his own needs by combining with the basic regulation only those particular commodity supplements in which he is interested.

(3) It will provide the automatic standardization of all basic provisions included. This will (a) help to unify and coordinate OPA pricing techniques; (b) keep each supplement automatically abreast of improvements in the basic provisions; and (c) facilitate general compliance with the basic provisions.

(4) It will greatly reduce the time heretofore necessary to change any provision of general applicability.

(5) It will greatly reduce the amount of paper now used in preliminary drafts, original regulations and subsequent amendments and collations.

The disadvantages of the plan are believed to be minor. A certain amount of cross referencing from the applicable supplement to the basic regulation is necessary. However, it is believed that no further burden is entailed in this plan than already exists in those large regulations which employ appendices, where it is usually necessary for the reader to refer from the appendix back to the main body of the regulation to find the answer to a problem of general concern. On the contrary, it is believed that this phase of the plan provides a certain compensating advantage. The provisions to which it is necessary to refer in the basic regulation are those which are used comparatively infrequently. Stating these provisions in a separate, though readily accessible, document actually facilitates the ordinary use of the individual supplements.

Moreover, the net result of the present scheme is actually to *reduce* the total amount of cross referencing that has heretofore been necessary. Under the earlier regulations now being replaced, the food processor has had to refer to at least the following documents to get the full picture of the pricing provisions affecting him: the applicable price regulation, the Emergency Price Control Act, the General Maximum Price Regulation, and Supplementary Orders 7, 9, 28, 31, 34 and 41. Under Food Products Regulation No. 1, the seller of a given commodity has the whole story in two.

The Price Administrator believes that the application of the plan outlined above in those broad areas where both uniformity and diversity of treatment are essential will greatly facilitate the administration of, and compliance with, OPA's maximum price requirements.

Issued this 16th day of June, 1944.

CHESTER BOWLES,
Administrator.

CONGRESS PLACES RESTRICTIONS ON USE OF FUNDS BY OPA IN PRICING PROCESSED FRUITS AND VEGETABLES

By a provision of the Second Deficiency Appropriation Bill approved by Congress and sent to the President on June 23, the Office of Price Administration is denied the use of funds appropriated for its operations "to pay the salary or expenses of any person fixing maximum prices for different kinds, classes, or types of processed fruits and vegetables which are described in terms of specifications or standards, unless such specifications or standards were, prior to such order, in general use".

In the bill as passed by the House the provision was broader and was applicable to the pricing of commodities in general. The Senate Appropriations Committee in reporting the bill unanimously approved the provision so amended as to make it applicable only to the pricing of processed fruits and vegetables, but the provision was rejected by the Senate after floor debate.

The bill was sent to conference to reconcile various differences between the House and Senate, and the Conference Committee agreed upon the House provision so amended as to make it applicable to the pricing of processed fruits and vegetables.

This appropriation act is separate from the bill which extends the life of the Emergency Price Control Act and which is discussed in this week's Information Letter.